

THE
Parsons COUNSELLOR,
WITH THE
LAW
OF
TITHES or TITHING.
In Two BOOKS.

The First sheweth, the Order every Parson, Vicar, & enough to observe, in obtaining a *Spiritual Preferment*, and what *Duties* are incumbent upon him after the taking the same, and many other things necessary for every CLERGY-MAN to know and observe.

The Second shews, in what manner all Sorts of *Tithes*, *Offerings*, *Mortuaries* and other *Church-Duties* are to be paid, as well in LONDON as elsewhere, and as well by the *Canon* as *Common* and *Statute-Laws*, and in what Courts and manner they may be recovered, what *Charges* they are subject to, and many other things concerning the same, necessary for CLERGY-MEN and all others to know.

The Second Edition Corrected, and several new Chapters and other Matters inserted through the whole Book, with a Table, &c.

Written by Sir SIMON DEGGE. Kt.

L O N D O N,

Printed by the Assigns of Richard and Edward Atkins Esquires,
for Henry Twyford in Vine-Court Middle-Temple. 1677.

1471 of 5.

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Albys Higghes his book
1694



I do allow the Re-printing the
**PARSONS COUNSEL-
LOR** as it is now corrected
and Inlarged.

Jan. 2.
1676.

Fra: North.



TO THE
RIGHT HONOURABLE
AND

RIGHT REVEREND

FATHER in GOD

THOMAS,

LORD BISHOP

OF

Lichfield and Coventry.

My Lord,

I Thought to have sent
this Trifle into the
World without Pa-
on, or Authors Name to it;
it 'tis well known, how scan-
A 2 dalous

The Epistle

dalous it is to that Child
whose Parent is ashamed to
own it ; I therefore resolved
to run the Censure of a criti-
cal World: And then observing
how antient Dedications have
been both by Greek and La-
tine Authors, and that they are
continued to this day through-
out all Christendom, I resolved
not to be singular : and consi-
dering, that this little Under-
taking was performed at the
Request of some reverend
Clergymen of Your Lordships
Diocess, and that it was nur-
sed up to what it is now pre-
sented to your Lordship there
likewise

Dedictory.

likewise, I conceived it could not challenge the Patronage of any other more properly than of Your Lordship; and therefore such as it is, I here humbly present it to Your Lordship. My Lord, at first I designed no more but the Second Part of what it now is: but observing Your Lordships diligent and great care at your Lordships Primary Visitation at Derby against Simony, Diliapidations and Nonresidence, the three great Pests in the Church, I added three Chapters upon those Subjects; and after adding one thing after a-

The Epistle

nother, it came to make a distinct Part of this Work alone. My Lord, Your Lordship has had many Honourable and Worthy Predecessors, and I cannot forbear to mention to Your Lordship Your immediate Predecessor my Lord Bishop Hacket, with what indefatigable Industry did he repair, or rather re-edifie the Church at Lichfield, which he happily lived to finish? A Work could hardly have been performed by any other. How circumspectly, prudently and diligently did he govern his Church, never absenting himself, unless
in

Dedicatory.

in his Majestie's and Countries Service? How constantly did he visit and preach through his Diocess? A Religious Pattern for all his Clergy. What great Insight had he both in the Civil, Canon and Common Laws, that related to the Church Government? How oft did he sit in his Consistory to see Justice done? Nay, what did he neglect, that beoame a worthy Prelate to do? and for his deep and profound Learning in his Function, certainly few exceeded him, if I have any Judgment. My Lord, I have observed three things

A 4 perpe-

The Epistle:

*perpetuate mens memory to posterity , Children , Learned Writings, and publick and eminent Buildings, he was fortunate in them all ; he has left a Worthy Son to inherit his Name, Virtue, and Temporal Estate ; he has left many Learned Works for the benefit of Posterity, whereof some are already made publick; and he has made himself no less eminent by his publick Buildings , witness his Cathedral Church at Lichfield, and Trinity Colledge in Cambridge, where he had his Education; besides many other Works of
Piety*

Dedictory.

Piety and charity in those few years he was Bishop. My Lord, God hath not yet blest you with Children, but may in good time to preserve Your Name: and I have heard Your Lordship intends some eminent Works of the Publick; and that Your Lordship hath resolved to go on, where Your Predecessor left, in Building a Palace for Your self and Successors, I have great reason to believe, having heard Your Lordship so often declare You would do it; and having laid Your hand to the Plow in preparing some Materials towards it,

The Epistle

Tit. 1.8. *it, I know you will not look back: I have heard Your Lordship declare how much you delight in Hospitality, which can never be so splendid as in a Palace of Your own Building: And hereby Your Lordship will make Your self as eminent in the next Age, as Your Worthy Predecessor is in the present, than which nothing can be greater satisfaction to all, but chiefly to,*

My Honoured good Lord,
Your Lordships most dutiful Son, and most obedient Servant

S. Degge.

To the Parsons, Vicars, and
the rest of the Reverend
Clergy of the Church of
England.



*Your kind acceptance of the
first Impression of this
Book has encouraged me
this second time to appear in publick.
The first was hurried to the Press so
hastily, that I had not time seri-
ously to peruse it, whereby some things
were slipt in the Copy; and my being
far from the Press occasioned many
mistakes by the Printer. In this
something more care has been taken,
though this is not without slips (though
for the most part but literal) as will
appear by the Errata annex. The
only essential oversight in the first Im-
pression*

pression (which I have yet discover'd)
was in the 6th Chapter of the First
Book, which I must desire may be cor-
rected by this. I have added many
things to this Second Edition, with
three whole Chapters: I did hope to
have added the late Resolutions in the
Exchequer concerning Tithes du-
ring my Lord Chief Justice Hales sit-
ting there; But a pretended Friend
broke promise with me. So tho' it be not
so well for you as I wisht, yet (I'll as-
sure you) it is as well as I could make it
out of my own Study, having had lit-
tle other help. Your continued kind ac-
ceptance will make me think my la-
bour well bestowed.

Et sic Valet.

S. D.

To the Courteous Reader.

IT is observed in the second ^{Co. 2.}
^{44. b.} part of Sir *Edward Cokes* Reports in the Bishop of *Winchesters* case, that there were two great persecutions of the Christian Religion, the one under *Dioclesian*, the other under *Julian* the Apostate ; The first by murdering the Priests, that by their preaching advanced the Christian Religion ; the latter by spoiling the Church of its Revenues. The former contrary to expectation advanced, and not suppressed Religion : for it has proved in all Ages, that *sanguis martyrum est semen Ecclesiae* ; for the patient suffering of so many Martyrs of
the

To the Reader.

the Primitive Christians gave the World a sufficient Testimony, that those poor Christians had some extraordinary Divine assistance to undergo with patience so much cruelty, that no others durst put themselves unto the trial of. But the taking away the revenues of the Church Martyred the Priesthood it self, and struck at the foundation: for when People saw there was nothing left but persecutions, no sustenance for those that Ministered at the Altar, it discouraged them to breed their Children up to a study that advanced them to nothing but danger; which introduced great ignorance of the true Knowledge of God and Religion

To the Reader.

Religion : so that as one killed
the Priests, the other destroyed the
very Priesthood it self. And though
the Apostle St. *Paul* got his Li-
ving by his labour, that he might
not become burthensome to his
Profelytes; yet the same Apostle
tells us, that *the Labourer is worthy*
of his hire, and that by the Law of
Moses the Oxe was not to be muzzled
that treads forth the Corn : and by
way of Expostulation in another
place says, *who goes on warfare at*
his own charge? who plants a Vineyard
and eats not of the fruit thereof? and
who feeds a Flock, and eats not of the
milk thereof ? for he that ploweth
should plow in hope, and he that
thresheth should be partaker of his
hope. And again says he, *is it a*
great

2 Cor. 11.
9.

2 Cor.
11, 12,
14, 16.
Mat. 10.
10.
1 Tim.
5. 18.

2 Cor.
9. 7, 9, 10.

To the Reader.

*great thing, that those that sow to you
Spiritual things, should reap carnal?
And do you not know (says the
same Apostle) that they that Mini-
ster about holy things, live of the
things of the Temple? and that they
that wait at the Altar, are partakers
with the Altar? for so hath the Lord
ordained, that they that preach the
Gospel, should live of the Gospel.
what effect this Doctrine wrought
amongst the Primitive Christians,
you may read in the fourth
Chapter of the Acts of the Apo-
stles, where it is said, that as many
as were possessors of Houses or Lands
sold them, and brought the prices of
things that were sold, and laid them
down at the Apostles feet; and distri-
bution was made to every man ac-
cording*

To the Reader.

ording as he had need. But the Christians of this present Age are so far from selling their Houses and Lands, and laying the price at the Apostles feet, that they will rather detain that from the Clergy, which by Law and right is due to them. But, certainly, had the sincerity of the Primitive Christians continued, I should never have needed to have set pen to the paper upon this subject I am now about, which is *the Law of Tithes or Tithing*: a duty established by the Laws of this, as of other Nations, for the maintenance of the secular Clergy, and for their sake it is that I have undertaken this work. There was a Tithing Table published

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many

To the Reader.

many years ago by a Bachelor of Laws , wherein he has learnedly set forth the manner of Tithing by the Canon and Ecclesiastical Laws : but those Laws and the Common Laws of this Realm differing in many things, wherein the Common Law is to be preferred ; that Tithing Table has often led both Parson and Parishioners into many errors : besides the several discharges from payment of Tithes, either absolutely, or *sub modo*, of divers Lands in *England* , by the Statutes or Common Laws, makes great alteration here from the Canon Laws. To rectifie which, and, as near as may be , to reconcile the Canon and Common Laws, I did by the

To the Reader.

the perswasion of some Reverend Divines first make some Animadversions upon that Tithing Table: but when I had done that, considering there were many more things in relation to Tithing, that I could not conveniently apply to that Text, concerning Prescriptions, Customes, Compositions, and other privileges, besides the Laws concerning Offerings, Mortuaries, and other Church duties, fit for all men to know, as well Lay as Clergy, I adventured upon this larger Work. Which I the rather did, because I do not find any other that hath published any compleat work in this kind, or to reconcile the Common and Ca-

To the Reader.

non Laws, that kind of learning lying dispersed in our Law Books; I have therefore in favour of the Parsons and Vicars, taken up a former resolution, and adventured to expose my self to the publick censure. And though I cannot promise any perfection in this work, yet I dare presume to say, it is the most perfect work of this nature yet extant; though I can pretend to nothing of it but the errors and mistakes, which I will be thankful to any body that will friendly correct, that I may make it more exact in a second Edition, if I have encouragement. The hindrance of conversing with the learned, by reason of my confinement to the Country,
and

To the Reader.

and not having access to any public Libraries, hath hindred me of some helps I might have had thereby. Perhaps it may not be so acceptable to those in whose favour I have writ it, because it comes from the pen of one who professes himself a common Lawyer: But in my Judgment, in this Nation, wherein the common Laws and customes of the Country prevail against the Canon and Ecclesiastical Laws; this subject is not altogether improper, if not most proper for a common Lawyer. And truly I have through this discourse dealt with as impartial an hand as the matter would admit. And though the Clergy may think it to their

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To the Reader.

prejudice, that I have at large set forth the several discharges by which lands are freed from the payment of Tithes : yet in that I have given them a clear light , which lands cannot be so privileged , and what Prescriptions and *modus decimandi* is not good, being well assured that there are more Lands at this day escape payment of Tithes upon pretence of some priviledg, to which they have no right, than those that pay Tithes, and might legally be discharged. But when I have done my best endeavour to serve the Reverend Clergy, I cannot give them Incouragement to depend upon their own Judgments , grounded upon any thing here writ ;

To the Reader.

writ : for though this may suffice to give them some light , what shall be due to them , yet I cannot hope by any thing I can write to make them Lawyers ; for many *Quære's* will arise, that no foresight of mine could give an Answer to : but this benefit I hope they will receive by my labours, that they may put their Case, and make their doubts known more pertinently to the learned. I had no sooner finished this little Tract concerning Tithes, but I considered there were many other things almost as useful for a Clergyman to know , as the Law of Tithes : And though Mr. *Hughes* of *Graves-Inn* many years since published a Learned Tract which

To the Reader.

he intituled the *Parson's Law*; yet there are many more things necessary for a Clergyman to know, that are there only briefly or not at all touched upon; and of such force, that they must either be performed and observed to make a man a compleat Parson, or to make him none, though never so exactly instituted and inducted, if omitted. I have therefore in the first place, before I come to the Law of Tithes, shewed, what Simony is, and what danger those run themselves into, that are guilty of it; what things every Parson, Vicar, &c. is to do before, at, and after his Institution and Induction, to make him a compleat Parson, &c. what Dilapidations are,

To the Reader.

are, and how pernicious; what Priviledges the Clergy have at this day by the Laws of *England*; what Charges & Payments their Tithes and Church-livings are subject unto, what Causes of Deprivation have been allowed of by the Laws of *England*; what Leases they may take or set, and what Statutes they may fall in danger of; and of Pluralities, and who is qualified to have them, and in what manner to be accepted; Non-residence, and many other things necessary for every *Clergy-man* to know. I have divided the whole into Two Books, and them again into several Chapters and Paragraphs, and added a short Table for the more ready finding

To the Reader .

finding of any thing in either. I have likewise added a List or Catalogue of all the Abbeyes and Priories, that Were valued in the Kings Books at 200 *l. per annum*, or upwards, and which were dissolved by the Statute of 31. *H. 8.* the Lands of which can only pretend to any priviledge to be discharged of the payment of Tithes ; in which I have rather chosen to write after Mr. *Dugdale*, being a sure Author, than Mr. *Speed*, in whom I have observed many Mistakes. I must beg the Readers patience to correct the Mistakes of the *Printer* (which are too many by reason of my absence from the Press:) and for my own I shall take it kindly from

To the Reader,

from any body, that will in a friendly manner inform me of them ; for *Humanum est errare*; and though I may have cause to be ashamed of them , yet I will never be ashamed to amend.

Vale.

The Contents.

The Contents of the several Chapters
contained in the first part of this Book,
Intituled the *Parsons Counsellor*.

- | | |
|---|--|
| <i>Who may be a Parson.</i> | CHAP. 1. sheweth, who may, or may not be a Parson, Vicar, &c. |
| <i>How he must proceed in taking a Living.</i> | Chap. 2. sheweth, how one that is a Person fitly qualified to be a Parson, Vicar, &c. ought to proceed in the obtaining and accepting of a Benefice. |
| <i>Jure Patronatus.</i> | Chap. 3. shews, in what cases 'tis necessary for the Bishop to have a jure patronatus, and how to proceed in the same, and what is the force and effect thereof. |
| <i>Pluralities.</i> | Chap. 4. shews, how the Law stood concerning Pluralities before the Stat. of 21 H. 8. who are qualified within that Law to have Pluralities, and how they ought to behave themselves in taking the second Livings, so that the first may not be made void. |
| <i>Simony.</i> | Chap. 5. shews, what Simony is, and who shall be said to be guilty of it, and what are the dangers ensuing thereupon. |
| <i>What he is to do, at, before, and after Institution and Induction.</i> | Chap. 6. shews, what one is to do before and at Institution, and after Induction, to make himself a compleat Parson. |
| <i>Non-residence.</i> | Chap. 7. shews, what is required further, of Parsons, &c. after Induction, and what Nonresidence is, and the dangers incurred thereby, and what matters will excuse the same. |
| <i>Dilapidations.</i> | Chap. 8. shews, what shall be said to be Dilapidations, and how the same are remedied and punished. |

Chap.

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Chap. 9. shews, for what cause a Parson, Deprivation. Vicar, &c. may be deprived, according to the Rules of the Common Laws.

Chap. 10. shews, what Leases a Parson, Leases. Vicar, &c. may make of his Glebe and Tithes, and what Farms he may, or may Farms. not take, and within the danger of what other Statutes they may fall.

Chap. 11. shews, what Priviledges are al- Priviledges of lowed to the Clergy in Holy Orders by the Clergy. the Statute and Common Laws of this Realm, and what are pretended to by the Ecclesiastical Laws.

Chap. 12. shews, how the Law stands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how the Churches and Chappels are to be repaired; and concerning the Seats, Burials, Tombs, Coats of Arms, and other Ensigns of Honour in memory of the dead; and of the Church-Ornaments, and at whose charge to be provided; and what remedy for Trespasses in the Church, Church-yard, or in breaking up of Tombs, taking, carrying away or imbesfilling any of the Goods, or Ornaments of the Church, &c.

Chap. 13. Treats of Parsonages, Vicarages, Sine-Cura's, and Donatives, and of the Endowments of Vicarages, and how, and in what Cases, a Parsonage and the Vicarage are to be reunited, and many other things relating to Parsonages, Vicarages, Donatives, and Sine-Cura's.

Chap.

The Contents.

Chap. 14. *shews, what Resignations and Permutations are, in what manner they may be made, and other matters relating to them.*

The Contents of the several Chapters contained in the second part of this Book, Intituled the *Law of Tithes, or Tithing.*

Quid, quotu
plex, & quo
modo debet-

*By whom, and
to whom due.*

*What things
are Titihable.
Corn, Hay, &c.*

Wood.

Herbage.

*Calves, Milk,
Cheese, Wool,
Lambs, Pigs,
&c.*

*Seeds, Fruit,
Mast, Bees,
Hony;*

*Things feræ
naturæ.*

CHAP. 1. *shews, what Tithes are; the several sorts and kinds thereof, and how the same become due.*

Chap. 2. *shews, by whom, and to whom Tithes ought to be paid.*

Chap. 3. *shews, of what things Tithes are due to be paid, and in what manner the Tithes of Corn, Hay, &c. are to be paid.*

Chap. 4. *shews, where, and in what cases the Tithes of wood ought to be paid.*

Chap. 5. *shews, where Tithes are due for Herbage or Agistment of Cattle, and who is to pay the same.*

Chap. 6. *shews, where, and in what manner the Tithes of Calves, Milk, Cheese, Wool, Lambs, Pigs, &c. are payable.*

Chap. 7. *shews, in what manner the Tithes of Seeds, Fruit, Mast, Bees, &c. are to be paid.*

Chap. 8. *shews, where, and in what manner the Tithes of Pigeons, Conies, Fish, Deer, and other Birds and Beasts feræ naturæ, are titihable.*

Chap.

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- Chap. 9. *shews, of what nature the Tithes Mills, of Mills are, and in what cases payable.*
- Chap. 10. *Treats of the Tithes of Hawking, Hunting, Fishing, Fowling, &c. and other personal Tithes.* *Personal Tithes.*
- Chap. 11. *Treats of the Tithes of Ducks, Geese, Swans, Turkeys, and other domestic Fowls and Birds.* *Domestic Birds.*
- Chap. 12. *shews, of what things Tithes are not due by the Common Laws of this Realm.* *Of what things Tithes are not payable.*
- Chap. 13. *shews, what force Customs have as well in the form and manner of Tithing, as in the discharging the payment thereof, and the difference between Custom and Prescription.* *Customs.*
- Chap. 14. *shews, what Priviledges the Parson, Vicar, &c. have in the Grounds where the Tithes arise, for the drying, making and carrying away the same.* *Interest in the Lands.*
- Chap. 15. *shews, to what charges the Glebe and Tithes are subject and liable.* *To what charge subj'd.*
- Chap. 16. *shews, how far Prescription will prevail in the manner of Tithing, and in what cases a modus decimandi will bind the Parson, &c.* *Modus decimandi.*
- Chap. 17. *shews, how a modus decimandi may be destroyed.* *How to be destroyed.*
- Chap. 18. *shews, by what conveyances, and by what names Tithes may be granted, demised, &c. and what Demises and Leases made by Parsons, Vicars, and other Ecclesiasticks, &c. are good,* *How to be conveyed. Of Leases.*
- Chap.

The Contents.

**Barren
Ground.**

Chap. 19. *shews, what barren Lands are freed from payment of Tithes within the Statute of 2 E. 6.*

**Real Composi-
tions.**

Chap. 20. *shews, what a Real composition is, and in what Cases Lands shall be freed from the payment of Tithes thereby.*

**Monastery
Lands.**

Chap. 21. *shews, what Monastery Lands are, or may be freed from the payment of Tithes.*

**Personal
Tithes.**

Chap. 22. *shews, what personal Tithes are, and in what cases due and payable.*

Oblations.

Chap. 23. *shews, what Oblations, Offerings, &c. are, and where due and payable.*

Mortuaries.

Chap. 24. *shews, what Mortuaries are, and in what Cases they are due and payable.*

London.

Chap. 25. *shews, how Tithes are to be paid in London, and several resolutions upon the Statute, made for the payment thereof.*

**How recove-
rable.**

Chap. 26. *shews, in what Courts, and in what manner Tithes may be sued for, and in what Cases Prohibitions lye for the staying of Suits for Tithes in the Ecclesiastical Courts, and how to proceed therein.*

Prohibitions.

**Directions in
the Marginal
references.**

Note, that in my references to printed Books in this Treatise, I for the most part refer to the page and part of the page where the matter is to be found in this manner, if the matter be at the upper end of the page I mark it with three pricks thus ∴ if in the middle thus ∴ if at the lower part thus ∴ and where the Book is numbred by Fol. I add the *A.* or the *B.* side, as it happens.

THE



THE
Parsons
COUNSELLOR.

CHAP. I.

*The First Chapter shews, Who may, or
who may not, be a Parson, Vicar, &c.*

HAVING taken upon me to
be the Parsons Counsellor,
it is necessary in the First
place, to shew who may
be a Parson, Vicar &c.

And by a Statute made
in the Fourteenth year of the King's Ma-
jesty that now is, all are made incapable
of being admitted to any Parsonage, or
B. Vicarage,

14 Car. 2. cap.
4.

* Promotion.

Vicarage, Benefice, or other Ecclesiastical Promotion, Preferment, or Dignity whatsoever, unless such person have Episcopal ordination; and if any shall presume to be admitted, not having such Ordination, or shall presume to Administer the Sacrament of the Lords Supper not being so Ordained, he is to forfeit a hundred pounds.

Concil. Arelat.
Can. 1 Concil.
Constant. ca.
14. & 15.
Concilium Ne-
Neocæsar. ca.
11.

By divers antient Canons of the Church, no man was to be a Deacon before he was twenty five years of age, nor a Priest before he should attain the age of thirty years; but notwithstanding the Canons they were frequently dispensed with, and made Priests younger.

St. 13 Eliz.
cap. 12.

And by a Statute made in the thirteenth year of Queen *Elizabeth* it is Enacted, that none shall be made Minister, or admitted to preach or Administer the Sacraments being under the Age of twenty four years; nor unless he first bring to the Bishop of that Diocess, from men known to the Bishop to be of sound Religion, a Testimonial both of his honest life, and of his professing the Doctrine expressed in the Thirty nine Articles; And unless he be able to answer and render to the Ordinary an accompt of his Faith in Latin, according to the said Articles, or have a special gift and ability to be a preacher: Nor shall be admitted to the order of Deacon or ministry, unless he shall first subscribe to the said Articles.

And

*By implication
this Statute al-
lows a man to be
made a Priest
at twenty four,
whereas by the
Canons he could
not be a Priest
before Thirty
years of age.*

And all dispensations in this case are made void by the same Statute.

So that upon the whole matter, none can be a Priest before he is 24 years of age, nor none can be a Parson before he is a Priest.

And by diverse antient Canons, and by Canons of our own, none ought to be ordained a Priest before he have a title; that is, a presentment to a Parsonage, Vicarage, or a Curacy.

And by another Provincial Canon of our own, those that have been guilty of Homicide, for that have been advocates *in causa Sanguinis*; those that are guilty of Simony, or makers or solicitors of Simoniackal contracts, witchcraft, burners of Churches, cannot be Priests without special dispensation, nor by consequence Parsons or Vicars.

And by another Provincial Canon of our own, those that are guilty of Simony, Homicide, persons excommunicate, *usurers, sacrilegious persons, Incendiaries, *vel* **Falsarios*, may not be admitted into holy orders, and by consequence may not be Parsons, Vicars, &c.

And by a Canon in the Council of Nice, a man that voluntarily castrated himself might not be a Priest; but if it were done by enemies, or by the advice of Physicians for health sake, it was no disability.

Bastards cannot be Priests without dis-

B 2

penstation

Can. Tac. 33.

distinct. 70.

cap. Nemine.

Cap. Imprimis

† 38. E. 3. b.

Cap. Cum
quanta.

* Distinctio.

47. Co. 5. 58. a.

38. E. 3. 2. a.

* Perjury, for-
gery dist. 50. Si
episcopus. 28.

E. 3. a.

Cap. Eos qui
de non. Dyer.

293. 5 H. 7. 20.

a.

penfation nor by consequence Parsons.

14.H.7.28. b.

15 H.7.7.b.

3 H.7. 20. a.

A Villain cannot be a Parson and if he be presented to a living the Bishop may refuse him.

Co. 5. 58. 2.

A Miscreant that does not believe the truth, an Infidel that does not believe at all, a Jew, Schismatick or Heretick that do not believe aright, ought not to be Parsons, and if inducted ought to be deprived; and so if the party be irreligious or illiterate, so if the party presented be *merè laicus* or *utlawed*.

And the Bishop may refuse a Clerk *quia criminofus*, for any of the crimes aforesaid though the party be not convicted, so the Bishop be certain of the truth thereof.

Co. 5. 58. a.

And all things that are just causes to deprive a Clerk are just causes to refuse a Clerk when presented.

Ibid.

But it is no good cause to refuse a Clerk because he is a player at unlawful games or a hunter of Taverns. because these are not *malum in se* but *malum prohibitum*.

Cap. Cum a jure inhibitur.
Concii. Lateran. Can. 31.

And the Son cannot without a dispensation be Parson of the same Church that his Father was incumbent of the next before him.

Albany vers.
Evesque
Lichf. M. 26; &
27. Eliz. C. B.
ro. 2023.

If a man cannot speak such Language as the Parishioners understand, he ought not to be admitted Parson of such a parish, but may be refused by the Bishop: for to be illiterate

illiterate and not to be understood, is all one to the Parishioners. And when the blind leads the blind both fall into the pit.

The Bishop cannot refuse a Clerk because he wants a testimonial.

But it should seem that if the Bishop dos admit and institute any person into a living that lyes under any of these incapacities, the church is full *de facto* till sentence of deprivation, nullity or declaratory, as the case requires, and no lapse incurs.

Lucas vers.
Evesque.
Bath. P. 3 El.
per Bendloes.
4 Inst. 338.
1 Leonard.
130.

Dyer. 293. b.
Mich. 16 & 17.
Eliz. per. Har.
per.

B 3 CHAP.

C H A P. II.

The second Chapter shews, how one that is fitly qualified to be a Parson, ought to behave himself in obtaining a Living.

A Parson so qualified as the Law requires, must, without any corrupt or Simoniack Contract, obtain a Presentation from the right and undoubted Patron of the Church whereof he designs to be Parson; which may be in this Form.

The Form of a Presentation.

Reverendo in Christo patri & domino T. divina permissione L. & C. Episcopo, ejusve Vicario in spiritualibus generali, A.B. Armiger, indubitatus Patronus Ecclesie parochialis de C. in Comitatu D. salutem in Domino sempiternam. Ad Ecclesiam de C. prædictam vestre diocesis, modo per mortem (if void by the death of the last Incumbent,) but if it be by resignation, then you must say (modo per resignationem) but if the Church be void by the last Incumbent's being made Bishop, or by taking a second Living, not being qualified, then you may say (per Cessionem) or as the special matter is, or if by deprivation, then you must say (per deprivationem) and then proceed E. F. ultimi incumbētis ibidem jam vacantem, & ad meam donationem ple-

no

no jure spectantem, dilectum mihi in Christo G.H. Clericum, in Artibus magistrum, paternitati vestre presento, humiliter supplicans, quatenus prefatum G. H. ad dictam Ecclesiam admittere, eumque Rectorem ejusdem Ecclesie instituire cum suis juribus & pertinentiis universis, ceteraque expedire & peragere, quae vestro in hac parte incumbunt officio pastorali, dignemini cum favore. In cujus rei Testimonium his presentibus sigillum meum apposui: Datum primo die M. anno regni domini nostri Caroli Secundi, Dei gratia, Angliae, Scotiae, Franciae & Hiberniae, Regis, fidei defensoris, &c. vicesimo octavo, Annoque domini 1675.

As soon as a Clerk has obtained such Presentation, it behoves him with all convenient speed, and within six months after the Church became void by Death, Creation or Cession of the last Incumbent, of which avoidances the Patron is at his peril to take notice, or within six months after notice legally given to the Patron by the Ordinary of the Church becoming void by Deprivation, or Resignation, tender his Presentation to the Bishop of that Diocese within which the Church is, or to his Vicargeneral, or in the vacation, when there is no Bishop of such Diocese, to the Guardians of the Spiritualities, to whom the Law allows a reasonable time to examine the abilities of the Clerk. For the Ordinary is not bound as soon as a

How to proceed upon the Presentation.

22 H.6. 29.
b.

Doct. & Stud.
l. 2. c. 31.
Dyer 327. p. 7.
Rol. 2 364.
b. f.
what time the Bishop may take to examine a Clerk
Lindwood
chap. cum secundum Apostolum.

1 H.7.9.b.
 *Hob. 317.
 15 H.7.7.b..
 † Can.95.
*The Canon-
 Law allows
 two months ;
 but the Common
 Law, which in
 all these Cases
 is to be pre-
 fer'd, allows
 only conveni-
 ent time.*
*Admission and
 Institution.*
 Co.4.79. a..
 32 H.6.28.b..
 33 H.6.24.a..
 38 H.6.15.a..
 Knowls versf.
 Dobbys P.21.
 Jac.C.B.
 Carter versf.
 Crofts 27 El.
 C.B.
*who may make
 Induction.*
 * Callis versf.
 Launt.
 † 11 H.4.9.b.
 Parson Den-
 nye's Case.
 H.6.Jac.ro.
 190. B.R.
 Plow.528.b.
*How induction
 is to be
 made.*

Clerk tenders his presentation to dispatch his business * ; but if he be busie about the affairs of his Church, he may make the Clerk to stay till he hath done, or may appoint him a convenient time to attend him for his approbation.

† By the ancient Canons the Bishop had two months time to consider of the ability and disability of the Clerk, but by a Canon made in the time of King James, that time is abbreviated to one month.

Then if the Ordinary, &c. upon the examination of the Clerk, find him fit in all points, as above in the First Chapter is directed, then he admits him in these words, *Admitto te habilem, &c.* And thereupon the Ordinary institutes him in these words, *Instituto te Rectorem Ecclesie parochialis de C. & habere curam animarum; & accipe curam tuam & meam.* And this the Bishop may do as well out of his Diocess as within it ; for as to this matter it is not local, but follows the Person of the Bishop whithersoever he goes. When the Bishop has instituted the Clerk, the Ordinary or, &c. makes a mandate under Seal to the Archdeacon of the place, * or to such other Clergy men as he pleases, to induct the Clerk. And it may be made † by the Dean and Chapter, but not by the Patron: for though by the Institution the Church is full against all persons save the King, yet he is not compleat Parson

Parson till Induction; for by the Institution he is admitted *ad officium* to pray and preach, yet he is not intitled *ad beneficium*, until he be formally inducted, which may be done by the delivering of the Ring of the Church door, or latch of the Church gate, or by delivery of a Clod or Turf, and Twig of the Glebe, but the most common and usual way is, and therefore the safest, by delivery of the Bell-rope to the new instituted Clerk, and he tolling the Bell: And the Archdeacon, if he do it, is to take but 40 *d.* for doing of it.

Lindsey vers.
Dodson M.9.
Jac.C.B.

And an Action of the case will lye against the Archdeacon, if he refuse or neglect to do his duty, or the Clerk may compel him to do his duty in the Ecclesiastical Court; and note that the Church is full against every body but the King, by the Institution; but not against the King till induction.

Linwood c.
Item quia
Archidiaconi,
8c.

Hill. 45 Eliz.
C.B.

Now note, that the six Months, within which the Patron is to present, are to be accounted by 192 days, and not by 28 days to the month.

Yelv. 100.
Co. 6, 61b.
62. a.

And note, that the Clerk is to do many things more at the time of his Institution, and after his Induction, to secure himself in his Living, which he will find in the sixth Chapter following, to which I refer him, and wherein very great care is to be taken, that all things be duly performed and observed.

What's to be
done after In-
ductions

There

*From what
time the six
months shall
commence.*

There hath been some Dispute, whether the six months shall commence from the time of the death of the last Incumbent, or other avoidance, or from such time as the Patron could reasonably have notice, considering the distance of places; and more particularly, where the Patron or Incumbent should happen to be beyond the Seas at the time of the avoidance.

Roll. 1. 363. 9.

And there hath been a Canon, *quod tempus semestre non incipit versus patronos, nisi à tempore scientie mortis persone.*

But by the Common Law of England, I conceive the Patron is bound to take notice of the Death, Creation or Cession, as aforesaid.

Regist. Orig.
42.

And this is proved by the Register, where in a prohibition 'tis said, *Quia secundum legem & consuetudinem Regni nostri Anglie Episcopi, &c. beneficia vacantia per lapsum temporis ante sex menses vacationum eorundem transactos conferre non debent, nec conferre consueverunt, aliquibus temporibus retractis.* So that it appears by this Writ, that the time of the six months to collate by lapse commences from the vacancy, and not from the notice: but this must be intended of such avoidances, whereof the Patron is bound to take notice as aforesaid.

*What time the
Patron is to
present.*

Kelw. 50. b. 1.
34 H. 7. 21. a. 1.
14 H. 7. 21. a. 1.
Dyer 227. p.
7.

And it is also to be observed, that if the Patron

Patron do present his Clerk, which is refused by the Ordinary, because he is illiterate, criminous, &c. there the Patron shall have no longer time to present but six months from the time of the avoidance, where the Patron is bound to take notice of it, and six months from the time of notice, where the Ordinary is bound to give notice of the Avoidance.

The Patron presents after Lapse incurr'd.

But note, that in all Cases, if a Church lapse to the Bishop or Archbishop, and the Patron present his Clerk before the Bishop or Archbishop have collated; the Bishop, &c. is bound to admit the Clerk of the true Patron, and cannot take advantage of the lapse. But the Canonists as should seem, hold the contrary, but the Common Law in this as in other things is to be preferred.

13 E. 4. 2. b. 2.

11 H. 4. 80.

2.

Hutton 24.

32 E. 3. 2.

Lindwood.

Si aliquis evin-

cente, &c.

verba injuria

But if the Bishop collate, and the Patron present before Induction, he comes too late.

Dyer 277 p.

56.

But the great question is, if the Church lapse to the King, and the Patron presents before the King take advantage of the lapse; Whether this shall avoid the Kings Title by Lapse? it is made a *Quare* by Dyer: but Hobart seems to be clear in it, that the King shall not have the benefit of the lapse; but divers * Authorities are against him, *Ideo quare*, *Rolls. 2. 368. b. 27. E. 3. 84. b. Co. 7. 28.*

Quere.

Dyer 277 p.

55.

Hob 132.

Hut. 24.

* Cro. Eliz.

119.

Cro. Jac. 216.

Doct. Owen 3, & 5.

What time the
Patron has to
present.

Screne Regi-
am majestatem
10-b.

chap. *Quoniam*
verbum devol-
uatur.

Doct. and Stud. lib. 2. cap. 31.

There have been some opinions amongst the Canonists, that a Lay-Patron should have but four months to present, but an Ecclesiastical person should have six months; and so it is said is the Law of Scotland, but the Common Law, which rules the point here, and with more reason, gives the Patrons in both Cases six months.

Doct. and
Stud. *ubi supra*.
Co. 6. 29. b.
Bro. El. 119.
Dyer 328. a.

In the Cases of Deprivation and Resignation, where the Patron is to have notice before the Church can lapse, the Patron is not bound to take notice from any body but the Bishop himself, or other Ordinary; which must be given personally to the Patron, if he live in the same County; but if the Patron live in a foreign County, then the notice may be published in the Parish-Church, and affixed on the Church door: And such notice must express in certain the Cause of the Deprivation, &c. and it must be *verò, proprio, personaliter, & non fide*. By the Ecclesiastical Laws. There are several other ways, that a Church may become void, of which the Patron is at his peril to take notice, as union, not payment of Tenths, &c.

Dyer 346. a.
Co. 6. 29. b.
Dyer 346. b.
Harp. 3 and 4
El.
Dyer 237.
P. 29. 255. p. 5.

St. 13 Eli. cap.
12.

But no lapse shall incur by any deprivation *ipso facto* by the Stat. of 13 Eliz. until six months after notice.

C H A P. III.

The Third Chapter shews, in what Case it is necessary that the Bishop have a Jure Patronatus, and how the same is to be proceeded in, and what is the effect and fruit of the same.

IF two Patrons present to one and the same Church by several Titles, the Church is become litigious; because the Bishop knows not which hath the very true and rightful Title to the same, and by Consequence knows not which Clerk to admit: And I take it, the Church is not less litigious, though they both present the same person: because when the Bishop admits him as the Clerk of the one, he puts the other out of possession, and consequently to his Action; and the Bishop becomes a Disturber, if he who is put out of possession prove to have the better Title:

In what cases a Church shall be said litigious.

Now the Bishop in this case to secure himself, ought to award a *Jure Patronatus* to inquire of the Right; which is meerly an Inquest of Office in nature of a *Writ de proprietate probanda*, and does not at all

where a Jure Patronatus is necessary, and how to be proceeded in.

† 34 H. 6. 38. all † bind the Title or Right of the Par-
ty.

35 H. 6. 18. b.
19. a.:

But it seems a question in our Books; whether the Bishop is bound to sue the *Jure Patronatus* at his own cost and peril, or only at the Prayer, and at the cost of the Party that prays it, or of both parties? but the better opinion seems to be; and so is the practice, that the same is to be sued at the prayer, and at the cost of one of the parties that prays it, or of both the Parties if they joyn.

34 H. 6. 12. a.:

Hob. 317.:

34 H. 6. 38.

5 H. 7. 22. a. it
is made a
Quære.

Now whereas the Church may become litigious by double or plural Presentations, so it may become more litigious by the *Jure Patronatus*; for if two Patrons present, and each of them prays a *Jure Patronatus* by himself (as they may) and the one Jury gives a Verdict for the ones Title, and the other for the others Title, here the Bishop receives no direction at all, but the Church still remains litigious.

But here arises another great question, whether the Bishop in this Case may let the Church Lapse, and collate; or whether he be not bound to admit one of the Clerks at his Election, or at his peril.

Callis Read.

3.

21 H. 6. 44. a.:

Quære.

Mr. Serjeant Callis in his Reading was of opinion, he might refuse both Clerks in this Case, and suffer the Church to Lapse: and so is the Book in 21 H. 6. by Newton and Paston, *nam in de quære.* And

And as a Church may become litigious ^{41 H.6.45.}
 by a *Jure Patronatus*. so it may become li- ²⁹
 tigious after a *Jure Patronatus*, and a Ver-
 dict given for one of the parties; for if a
Jure Patronatus be awarded, & a Verdict
 given for one of the Parties, and before
 the Patron presents, for whom the Verdict
 was given, and prays admittance of his
 Clerk (as he ought to do, before the Bishop
 is bound to admit his Clerk) another pre-
 sents; here the Church is become litigi-
 ous *de novo*, and the Bishop in this Case,
 as it seems, may award a new *Jure Pa-*
tronatus to determine the right of Patro-
 nage between the new and the old Patron,
 for whom the Title was found in the for-
 mer.

But some have thought, that though the ^{21 H.6.44.}
 Church be not litigious by double or ^{Callis Read-}
 plural Presentations, yet the Bishop, ^{ing. 29.}
 if he doubt of the Patrons Title that pre- ^{Hob. 318.}
 sents, may award a *Jure Patronatus*, and
 inquire of such Patrons Title, and by
 that means prevent the surprise that may
 happen to other pretenders by sudden
 admission of the Clerk; and in case
 the right of Patronage be found for
 a † stranger, the Bishop may admit his ^{† 34 H.6.44.}
 Clerk. ^{a.}

But it seems, that if the Bishop admit
 the Clerk that is presented before the
 Church becomes litigious by a second
 Presentation, the Bishop acquits him-
 self

Hob. 317.

self thereby from being a Disturber; but by this means the Bishop may do great wrong in surprising other Patrons that have right: And the Law doth not so hasten the Bishops proceeding, but that, as has been said, he may take convenient time to examine the Clerk, that other pretend-ers may take notice of the vacancy.

Hob 317..

But though the Church by any of the means abovesaid be become litigious, yet I think there is no doubt but that the Bishop may admit either Clerk without a *Jure Patronatus*, but then he doth it at a double peril; for if the Patron, whose Clerk he admits, have not a good Title, or having a good Title do not make it out in a *quare impedit*, or other Action brought for the Church, the Bishop will be made a Disturber.

And the Bishop may thereby do great wrong to the true Patron, by putting him out of possession of his Church, and forcing him to an Action that may turn much to his charge and trouble, beside great damage to his Clerk, and oft to the losse of the Advowson; therefore Bishops ought in this Case to be very tender to proceed according to Justice, But if the Patron fear any foul play from the Bishop, and be not resolved of his Clerk, he may enter a Caveat with the Bishop, not to admit the Clerk of any other, and though this do not so bind up the Bishop that

that he cannot * admit the Clerk of another person; yet if the Bishop will presume to do it without a *Jure Patronatus*, he may be punished by his Superiour.

Rolls 2. 361.
m. 3.
*contra Poph.
133.

But in case the Bishop delay to admit the true Patron's Clerk, he may sue a *Duplex Querela* out of the Arches, to command the Bishop to admit his Clerk; and then, if the Bishop do not admit the Clerk within nine days, or the space assigned by the *Duplex Querela*, or return a legal cause why he does it not, the *Metropolitan* may admit the Clerk in the Ordinaries default.

Sciomer
Zouch vers.
Evesque Peterborough &
al. T. 38 Eliz.
B.R.

But the Bishop may return, if the truth be so, that the Church is litigious, and that he cannot admit the Clerk till the right be determined in a *Jure Patronatus*, which will excuse him.

But the surest and safest way in this case is, if the Bishop delay the true Patron, immediately to sue a *Quare Impedit*, and thereupon a *Nè Admittas* to the Bishop; and then if the Bishop, after the receipt of such Writ, admit the Clerk of any other person without a Verdict in a *Jure Patronatus*, the true Patron may have a Writ called a *Quare Incumbravit*, against the Bishop, and may therein recover the Presentment with damages.

F.N.B. 37. f.

F.N.B. 48. g. h
ibi 1. 1, 21 E. 3.
3. a.

And it should seem this Writ lies, in case the Bishop admit the Clerk of the adverse Patron, notwithstanding he hath

F.N.B. 48. h.

obtained a Verdict in a *Jure Patronatus*: but this must be intended, I conceive, where such Patron is Defendant in the *Quare Impedit*.

Croke Jacobi
463.

And note, that a Caveat entred in the life of the former Incumbent is of no force.

Can. 95.

And note, that by a Canon made in the time of King *James*, the Patron or Clerk cannot have a *Duplex Querela* till 28 days are expired from the time the Clerk was presented:

*How far the
Bishop is bound
by a Verdict
in Jure Pa-
tron.*

And it seems likewise, that the Bishop is not so bound by the Verdict in a *Jure Patronatus*, but that he may admit the contrary Clerk, if he see cause, or be satisfied he has the better Title; but this seems to be against Justice and the true intent of the Law.

34 H. 6. II.
b.
Hob. 318.

And Sir *Henry Hobart* was of opinion, that an Action of the case lies against the Bishop by the Patron that is so disturbed, if in a *Quare Impedit* he prove to have the better Title, and recover his damages by reason of the delay and trouble the Bishop hath thereby put the Patron to; but then the Bishop must not be made a Defendant in the *Quare Impedit*: but of this *quere*.

Quere.

*The manner of
proceeding in
a Jure Patro-
natus.*

Now the manner and form of proceeding in a *Jure Patronatus* is thus: The Bishop issues forth a Commission under his Seal to his Chancellor, or some other persons,

persons, whom he pleases, that are expert in the Canon and Ecclesiastical Laws: in which Commission (since the Title of Patronages is determinable at the Common Law) it were not amiss to joyn some Common Lawyer of eminent Learning and Integrity; and these Commissioners are by him authorized to summon a *Jure Patronatus*, and to proceed to the Determination thereof, and then the Commissioner or Commissioners so authorized issue out a Mandate to some Officer of their own to summon a Jury, which must be one half Clerks, and the other half Lay-men; and if they refuse, being duly summoned, to appear, the Commissioners may proceed against the Clergy-men by Sequestration, and the Lay-men by Ecclesiastical Censures to compel an appearance. 22 H. 6. 29. b.

When a full Jury of Clergy-men and Laicks appear, which must be six of each at least, the Commissioners are to swear first a Clergy-man, and then a Lay-man, till twelve be sworn at least of the Jury: But the Commissioners may swear a greater number than twelve of the Jury, if they please, or see cause, so always that there be an equal number of Lay-men and Clergy-men sworn in the whole.

The points inquirable by this Commission are five:

1. *Si Ecclesia vacat, & quomodo vacavit?*

C 2

Quis

Callis Reading 29.

The Points inquirable in a *Jure Patron-*

2. *Quis Patronus ultimò presentavit ?*
3. *Quis est verus & indubitatus Patronus ?*
4. *Quis presentare debet ad Ecclesiam nunc vacantem ?*
5. *De Indouitate persone presentate.*

But the main and chief points are the third and fourth, the last resting wholly in the Judgment of the Bishop.

21 H.6.45. a..

After the Jury is sworn and charged, the Council and Advocates of both parties are to shew their respective Clients Titles, and produce their Evidences to prove the same. And after the Evidence is given on both sides, and Council fully heard, the Jury may give their Verdicts forthwith, or the Commissioners may give them time to consider of their Evidence, and may assign them another time and place for the giving their Verdict, as in other Inquests of Office; but I like much better (to avoid being tampered with) that they give their Verdicts forthwith before they part, unless new Evidence be expected.

22 H.6.29.b..

*The effect of a
Jure Patronatus.*

The effect of this Suit is no more but for the Bishop's security; that he may avoid being a Disturber; for the Verdict of this Jury is a sufficient warrant for the Bishop to admit and institute his Clerk, for whose Title the verdict is given, and the Bishop for so doing shall never be made a Disturber, though the other Pa-

tron

tron against whom the Verdict is given shall after recover in a *Quare Impedit* or other action.

But suppose the Jury will not agree of their Verdict, and the one half be for the one Patron, and the other half for the other Patron; or, that they refuse to give any Verdict at all; or if they find a special Verdict, as I suppose they may; the Bishop in all these cases is left to proceed at his peril, as though no *jure patronatus* had issued at all; or perhaps in this case he may discharge the Jury, and summon a new *jure patronatus*.

And it is to be observed, that after a Verdict found in a *jure patronatus* for the Patron, the Patron must again request the Bishop to admit his Clerk; otherwise, if the Church lapse after six months, the Bishop may Collate.

But if two Coparceners present several Clerks by the same Title, this doth not make the Church litigious, but the Bishop is bound to admit the Clerk of the elder sister: but this is to be intended where the eldest sister presents alone, and not jointly with any other of the Coheirs.

But if two Joyntenants or Tenants in Common present several Clerks, that makes not the Church litigious; for the Bishop may admit the Clerk of which he pleases: or if they do not agree and joyn in presenting a Clerk within the

What's to be done, if the Jury will not give a Verdict.
35 H. 6. 18. b.
&c.

34 H. 6. 12. a.
Callis Read.
29.

What's to be done where Coparceners, Joyntenants, or Tenants in Common, present severally.

21 H. 6. 45. a.
per *Ascue*.

34 H. 6. 40.
5 H. 7. 8.

11 H. 4. 58.

33 H. 6. 32.

1 Inst. 186. b.
Doct & Stud.
115. b.

Kire vers. Evesque
Bristol P. 7. Jac.
C. B. 1 Inst.
186. b.

6 E. 4. 10. b.

34 H.6.4.
b.

ubi supraz.

*If the Commis-
sioners neglect
their duties.*

22 H.6.30.a.

*Verdict does
not bind.*

21 H.6.45.3.

34 H.6.38.b.

six Months the Bishop may collate.

And note, that the Bishop needs not to make Commissioners to enquire *De jure patronatus*; but he may, if he pleases, do the same himself: and therefore, if his Commissioners neglect to do their duties, it shall not excuse him, because it was his folly to name such Commissioners. But the opinion of the Civilians seems otherwise: for they say, that the party shall name the Commissioners; and if they neglect their duties, it shall be at the per- adventure of the party that names them. And though they make a false return, or no return at all, it shall excuse the Bishop; and the party grieved is left to his action against the Commissioners.

And, as has been said, the Verdict in a *jure patronatus* does not bind the adverse party's Title, though it may be some evidence for him whose Title is found to be the best.

CHAP,

C H A P. IV.

Shews how the Law stood concerning Pluralities before the Statute of 21 H.8. cap.13. Who are qualified within that Law to have Pluralities; and how qualified persons ought to behave themselves in taking the second Livings, so that the former may not be void.

A Plurality is, where one and the same person obtains two or more Spiritual preferments with cure of Souls or without: against which there have been several Canons, and they have been alwaies discountenanced at the Common Law, and several Complaints have been made against them in Parliament; yet the Pope held them up by his Dispensations. How agreeable these Dispensations were to God's service; nay, how prejudicial they have been to the advance of the Christian Religion, and are, I leave others to judge; it being no part of my undertaking. And though I find a great Judge of this Nation defending of them, yet I find a Canon in the general Council of *Lateran* against them, in the Year 1215. in these words, *Statutum est*

What a Plurality is.

Co.4.90.b.1
Co.mag.ch.
626. Vide
the Records
there cited.

Hob. 149.
Concil. tom.
4.221. cap.29

Canon against
Pluralities.

quod, quicumque receperit aliquod beneficium habens curam animarum annexam, si prius tale beneficium obtinebat, eo sit jure ipso privatus, & si forte illud retinere contenderit, alio etiam spoliatur, Is quoque, ad quem prioris spectat donatio, illud post receptionem alterius conferat cui merito viderit conferendum.

* Can. 5.
Note, Those
Livings are
said to be in-
compatible
that have cure
of Souls.

And by the same Council it is further decreed, that *Dispensationes autem ad plura * incompatibilia ultra duo, nisi qualificatis juxta formam juris communis non concedantur, nisi ex magna & urgente causa.*

Tom. 5. 368.
cap. 64.

The effect of
Plural.

And now let me tell you the fruits of Pluralities out of another Council, which is delivered in these words. *Res ipsa loquitur, plura beneficia, potissimum quibus cura animarum submissa est, non sine gravi Ecclesiarum damno ab uno obtineri; cum unus in pluribus Ecclesiis rite officia persolvere, aut rebus earum necessariam curam impendere, nequeat.*

Gratian. causa
21. q. 1. Mag.

Yet notwithstanding the Canonists allow of Pluralities in six cases: 1. When the Churches are so poor, that either by it self it will not maintain a Minister. 2. In such cases as the Bishop dispenses with them. 3. Where there is a scarcity of Clerks. 4. Where the Clerk has one by Title, and the other by *Commendam*. 5. By Grant from the Pope. 6. Where two Churches are united; or depend the one

one upon another. Which Hostiens. renders thus:

*Ecclesias plures nullus de jure tenebit.
Dependens, tennis, rarus, vel gratia Papæ.
Utilitasurgens, & commendatio justa.*

But, as I take it, the Council of Lateran reduces all these qualifications to the Pope's dispensation. The Canon is as follows:

Cum fuit in hoc Concilio prohibitum ut nullus diversus dignitates Ecclesiasticas, & plures Ecclesias parochiales reciperet contra sacrorum Canonum instituta. Hoc idem in personalibus decernimus observandum, addentes, ut in eadem Ecclesia nullus plures dignitates habere presumat, aut parsonatus, etiamsi curam non habeant animarum. Circa sublimes tamen & literatas personas, quæ majoribus sunt beneficiis honoranda (cum ratio postulaverit) per sedem Apostolicam poterit dispensari, &c. Can. 29.

And upon this Canon, Goodman, Dean Dyer 273. of Wells was deprived of his Deanery, p. 35. because he had accepted the Prebend of Wiveliscombe in the same Church, in the time of E. 6. And note, these preferments were not within the Statute of Pluralities, but are left as they were upon the Canon Law; for the Statute only extends to Livings with cure of Souls.

Concil. Tri-
dent. 496.

I might enlarge much more upon this Subject; but it being collateral to what I design, this taste shall serve. And if any body desire further satisfaction upon this Subject, I commend him to the History of the Council of *Trent*; where he will find, that by the greater and better opinion of that Council, Residence by him that hath a preferment in the Church with cure of Souls is of Divine right; and that therefore the Pope had no power to dispense with non-Residence, the consequence of which is, that it is against Divine right for any to take more Benefices than one with cure of Souls, because the same person cannot be resident in two places at one and the same time, to discharge his duty; which requires a constant attendance.

More 119.

But as the Pope by stratagem made the endeavours of all the good men in that Council ineffectual, so by his frequent Dispensations to take Pluralities without number or measure. He made the Canons of the Church of no other effect than to increase his own Revenue by Dispensations.

Acceptance of
a second Li-
ving makes the
first void.

And it should seem the Council of *Lateran* was received and approved (as to that point) in this Kingdom, and the Law was alwaies taken, that he that had one Living with cure of Souls, and without dispensation accepted another with cure

cure of Souls, made the first void : So that the Patron of the first Church might present a new Clerk, and needed not to stay till the former Clerk should be legally deprived. But in this case the Church doth not lapse till the end of six Months, to be accounted from the time the Patron had legal notice of the vacancy from the Bishop; but after induction the Patron, as it should seem, is bound to take notice at his peril : And as to all others but the Patron, the Church remained full till induction into the second Living; and so are all the Books, that seem *prima facie* to differ, reconciled.

But the Parliament of *England*, that in all Ages made bold with his Holiness, and to restrain the exorbitances of the Pope and Court of *Rome* (as the Reader may see, if he pleases to satisfy himself by the several Acts of Parliament mentioned in the margin against Provisions suing at *Rome*, impeaching judgments given at the Common Law, Aliens being beneficed within this Realm, privileged religious orders from payment of Tithes, and many other things; and I cannot forbear to observe to the Reader the boldness of the Parliament in the sixth Year of *H. 4.* with his Holiness, where they restrain the giving of exorbitant and unjust fees for the investitures of Bishops. The act begins thus : *Whereas there is a*
damna-

Co. 4. 95. b.
44 E. 3. 22. a.
9 E. 3. 22. a.
10 E. 3. 1.
14 H. 7. 28. b.
14 H. 8. 17. a.
F. N. B. 34. L.
15 E. 3. 9.
11 H. 4. 37.
Cro. Car. 3 57.
Several acts to
restrain the
Pope.
27 E. 3. cap. 1.
3 R. 2. cap. 3.
7 R. 2. cap. 12.
2 H. 4. cap. 4.
38 E. 3. cap. 1.
16 R. 2. cap. 5.
6 H. 4. cap. 1.
25 E. 3. of
Provisions;
and 27 E. 3.
cap. 1.

6 H. 4. cap. 1.

damnable custome in the Court of Rome to take more for the investiture of Bishops, &c. Certainly these brave Parliamenteers never expected his Holiness's Indulgence or Pardon, this seeming a sin as high as that against the Holy Ghost to charge their Holy Father with a damnable custome in his Court, to use Extortion and Simony.)

And the Council of Lateran dealt almost as plainly with his Holiness, speaking of Simony; that Council has it, *Uenefarie Simonie labes & pestis non solum à Romana Curia, sed etiam ab omni Christiana ditione, in perpetuum dejectur, constitutiones per antecessores nostros etiam in sacris Conciliis nostris Editas contra hujusmodi Simoniacos, innovamus: easque inviolabiliter observari precipimus.*

But to return. I say the Parliament, to prevent the mischiefs of these Dispensations, made a Law in the twenty first year of H.8. That if any Person or Persons, having (that is, being instituted) one Benefice with cure of Souls, being of the yearly value of eight pounds or above, shall accept and take any other with cure of Souls, and be instituted and inducted into the possession of the same, that then, imme-

Can.8.

* Nota.

The Act against Pluralities.

21 H.8. c.13.

Co.4.79.b.

This is a confirmation of the Canon, where the Living is above 8 l. per annum, but does not annul the Canon Law in other Cases;

so that the effect of this Law is, that it takes away Dispensations in this case, but leaves the smaller Livings as they were before.

diately

diately after such possession had thereof, the first Benefice should be void.

And that it should be lawful to every Patron having the advowson thereof to present another, and the Presentee to have the benefit of the same, as though the Incumbent had died or resigned, and that any license, union, or other Dispensation contrary to that Act should be void.

If this Act had gone no further, it had been an excellent Law: But there are so many qualifications in this Law that wholly defeat the benefit of it, since the Nobility are grown so numerous as they are at this day; so that the grievance is now become as great as ever, if not greater, and deserves a new and stricter reformation; for almost all the greatest and best Livings of the Kingdom are now held by Pluralists, and served by mean Curates.

But now let me return to the Act, and let me observe:

That this Act has only provided a Remedy where the first Living is of the yearly value of Eight pounds or above, which must be understood according to the valuation taken in the twenty ninth year of King E.1. till the twenty sixth of H.8. And after that time, according to the valuation then returned into the Exchequer, and now made use of in the First-fruits office. *But many former Opinions and

Cro. ca.456.
P.19. Jac.C.B.
Evesque Durham vers. Evesque Peterborough.
Roy vers. Evesque Br. & Handley T.
44 El. B.R.
the Court was divided, r.564.
* Dyer 237.
p.29.

Cro. Eli. 853.

Quere.

Bulhy vers.

Smith. T.

40 Eli. r. 123.

and Books have been, that the valuation ought to be according to the true value. *Ideo quere.*

But in case the first Living be under the yearly value of Eight pounds, or a *fine cura*, then the party may accept a second, as he might have done before this Act, with a Dispensation, which he needs not now to go to Rome for, although he be not qualified within this Law.

But I conceive, if an Incumbent of a Living under the value take a second Living without a Dispensation, that the first Living is void by the Canon Law, though it be not so by the Statute.

Who are qualified to have Pluralities.

But by this Act there are several persons qualified to have and retain Pluralities; and those are of three sorts: 1. By Service, 2. by their Birth, and the 3. by Dignities. And first of those that are qualified by Service.

Qualifications.

1. All the King's Chaplains (which are not of his Council) and of the Queen, Prince, Princess, and Brethren and Sisters, Uncles and Aunts of the King.

2. Eight Chaplains of every Archbishop.

3. Six Chaplains of every Duke.

4. Five Chaplains of every Marquess and Earl.

5. Six Chaplains of every Bishop.

6. Four Chaplains of every Viscount.

7. Three

7. Three Chaplains of the Lord Chancellor, and of every Knight of the Garter and Baron.

8. Two Chaplains of every Dutches, Marchioness, Countess and Barones, being Widows.

9. Two Chaplains of the Treasurer and Controller of the King's House; the King's Secretary, the King's Almoner, Clerk of the Closet, and Master of the Rolls.

10. One Chaplain of the Chief Justice of the King's Bench, and Warden of the Cinque Ports for the time being.

All these in respect of their Services may purchase License or Dispensations, and take, receive, and keep three Parsonages or Benefices with cure of Souls, notwithstanding this Act.

But those of the King's Chaplains, that are sworn of the King's Council, may purchase License or Dispensations, and take, receive and keep three Parsonages, or, &c. with cure of Souls.

2. The second qualification is by Birth; *Qualification by Birth.* that is, the Brothers and Sons of all Temporal Lords and of Knights, born in Wedlock, may purchase License or Dispensations, and take, receive and keep two Parsonages, &c. with cure of Souls; in which qualification it is to be observed, that no provision is made for Bastards,

nor

nor for the Sons of Bishops, Abbots, Priors, &c. and note, in this case the Sons and Brothers of Knights have greater privilege, than the Sons and Brothers of Barons.

*Qualification
by Dignity.*

3. The third qualification is of certain persons dignified in the Universities; and of that sort are all Doctors and Bachelors of Divinity, Doctors and Bachelors of the Canon Laws, which shall be admitted to any of those degrees by any of the Universities of this Realm, and not by grace only; all which may purchase Licenses or Dispensations, and take, receive, and keep two Parsonages, &c. with cure of Souls.

*Proviso, that
above the num-
ber shall not be
advanced.*

And in this Act there is a negative *Proviso* to this effect, That no person or persons to whom any number of Chaplains, or any Chaplain by the provisions afore-said is limited, shall in any wise by colour of the same provisions, advance any Spiritual person or persons above the number to them appointed, to receive or keep any more Benefices with cure of Souls, than is above limited.

*Proviso, that
they must have
Testimonials.*

There is another *Proviso*, that the Chaplains so purchasing, taking, receiving and keeping Benefices with cure of Souls, as afore-said, shall be bound to have and exhibit, where need shall be, Letters under the sign and Seal of the King, or other their Lord or Master, testifying whose Chap-

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Chaplains they be, or else not to enjoy any plurality of Benefices by being such Chaplains. Upon this clause some question has been made, whether a Chaplain can be retained within the meaning of this Law by parol; and it seems he may, so that they have such Testimonial, when they pray their dispensation; but the safest way is to have it in writing, and it must be under Hand and Seal.

Roy vers.
Saveacre. T.
28 El. C.B. ro.
1130. Hughes
p. 41.
Roy vers. E.
velque Lin-
coln. & alios
T. 31 El. ro.
725. C.B.

Now having shewed what persons are qualified within this Statute, I will in the next place shew how the Clerk, that would have the benefit of his qualification within this Law, ought to proceed in the taking a second Living, so that the first may not be void, which is in this manner:

The Person that falls within any of the qualifications within this Law which makes him capable of a plurality, and having obtained a presentation to a second Living, must carry his Testimonial or Retainer under the Hand and Seal of his Lord or Master to the Master of the Faculties, who is to make out his Dispensation or License to accept the second Benefice; which being obtained, he must next have it confirmed under the great Seal of *England*; and after he has thus obtained his Dispensation, and has it confirmed under the great Seal, then, and not before, he is to apply himself to the Bishop of

How to proceed in the taking of a second Living.

Stat. 25 H. 8.
cap. 21.

the Diocess where the Living lies for his admission and institution: But these things taking some time in the doing, I advise the Clerk immediately to enter a Caveat with the Bishop and his Vicar general, and carry his presentation to the Bishop and acquaint him with it, and with the reason of his delay, lest he should be surprized. Though by the Letter of the Act the first Living is not void until induction into the second Living, the words whereof are as follows (*if the party be instituted and inducted in possession of the second Living that then the first shall be void.*) Yet to avoid the great inconvenience that otherwise would ensue, it has been held that the first Living is void upon the bare institution into the second Living, and so it should seem the Law was before the making of this Act, where the party had no dispensation.

*First Living
void by institution into the
Second.*

Co.4.79.b.
Hob.166.

*Which Chaplains shall be
qualified, where above
the number is
retained.
More 561.
Co.4.90.a.
& 118.a.R.
vers. Evesque
Glouc. &
Saveacre. An-
derson 200.*

And it is to be observed upon this Law, that in case any Lord or other Person, whose Chaplains are qualified within this Law to have two or more Livings incompatible, do retain his full number of Chaplains, and after one or more above his number; that in that case the Supernumerary Chaplains, that were retained after such Lord or other Person had retained his full number allowed by the Statute, are not qualified by this Law to have pluralities of Livings, although the super-

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supernumerary Chaplains be preferred before the other that were first retained: but if a Chaplain qualified within this Law be legally inducted into a second Living with a dispensation as he ought; although his Master be attainted, degraded, or removed from his Office, yet he shall retain his Plurality during his life.

But if one be retained Chaplain to any Lord or other Person, whose Chaplains are qualified within this Law, and his Master dies, is attaint, degraded or displac'd before his Chaplain be preferred to a second Living; or if such Lord or other Person discharge such a Chaplain (as he may); in all these cases the Chaplain loses his qualification to have plurality of Livings incompatible.

But if a Dutchesse, Marchioness, Countess or Baroness do retain a Chaplain, and after marries, this shall not take away the qualification of such a Chaplain, but that he may have plurality of Livings * incompatible within this Law, as he might have done before.

And if such Dutchesse, &c. retains Chaplains, and after marries, and after becomes a Widow again; yet the first retainer stands good, and was not Countermanded by the Marriage, or death of the Husband.

And note that there is a *Proviso* in this Act, that though a Dutchesse, Marchioness;

D 2 Countess,

The Master dies, &c. before preferment.
Co. 4. 117. b.

Co. 4. 118. B.
The Mrs. marries.

* *That is, having cure of Souls.*

Co. 4. 119. A.

Countess, or Baroness, do marry a Husband under the degree of a Noble Man or Baron, that yet nevertheless she may retain two Chaplains which shall be qualified within this Law.

What preferments are not within this Law.

And it is declared by this Act, that Deanries, Arch Deaconries, Chancellorships, Treasurerhips, Chaunterships or Prebendaries in any Cathedral or Collegiate Church, or any Parsonage that hath a Vicar endowed, or any Benefice perpetually impropriated, are not to be esteemed Benefices with cure of Souls within this Act.

Co. 4. 118. 2.

And if any Duke, Lord, or other person, whose Chaplains are qualified within this Law, shall have a double capacity to qualify his Chaplains; as if a Duke, &c. be made Lord Warden of the Cinque Ports, or a Baron; Master of the Rolls, Knight of the Garter; &c. in all these cases such Duke, Baron, &c. can but qualify his number of Chaplains, according to his best qualification only.

Chapl. retained in the life of the Father.

Co. 4. 90. 2.

And if the eldest Son of a Duke, Marquess, &c. retain Chaplains in the life time of his Father, who after dies, and the honour descends upon such Son; yet this retainer will not qualify his Chaplains to have pluralities within this Statute, because at the time of the retainer he was not capable to qualify them. *Et quod ab initio non valet, tractu temporis non convalescit.*

If a Duke, Marquess, &c. retain his full number of Chaplains which are advanced, and then discharge them, yet he cannot during their Lives qualifie any other within this Statute.

Lord discharges Chaplains after they are prefer'd.
Co.4.90.a.

But if a Duke, Marquess, &c. that has power within this Act to qualifie Chaplains, at one instant of time retain double his number of Chaplains, or any supernumerary Chaplains; in that case, those only shall have the benefit of qualification that are first prefer'd. *Quia in equali jure melius est conditio possidentis.*

A greater number of Chapl. retained together.
Co.4.90.a.
Dyer 312.
p.88.

If one that is qualified within this Statute take a second Living incompatible, and be instituted or inducted into the same before he have obtained a Dispensation, the first is void; though Dyer makes a *quere* of it.

Co 4.79.B.
Dyer 312.
p.88.

And note, that it hath been resolved, that the King himself cannot dispense with this Law.

This Law is not dispensable.

But if one that is qualified within this Law to have two livings incompatible, shall neglect at the time of his Institution to subscribe to the 39 Articles of Religion, though he be after inducted into the second Living, yet this shall not make the first void, for his Institution, and Induction, were both void *ab initio*; but if such person had subscribed the Articles, at the time of his Institution,

A Pluralist neglects to subscribe or read the 39 Articles.
Dyer 377.b.
Coke 5.102.
b.
Hob.157.

Vaughan 129,
&c.

Hob. 157.:

and had after neglected to read them within two months after his induction into the second Living, this makes both Livings void (as was lately adjudged) because for two months he was compleat Parson of the second Living.

And if a Parson, &c. that is qualified within this Statute to have plurality of Livings incompatible, be made a Bishop, his qualification ceases, so that after he cannot take two Benefices incompatible by force of such qualification; but if he had two Livings before he was made Bishop by qualification and dispensation within this Statute, he may retain them by *Commendam*: and although he were the King's Chaplain, it alters not the case; for by the acceptance of a Bishoprick he ceases to be the King's Chaplain within this Law.

Parsons Law
l. 2. 14 & 15.
Uniting a Living is a plurality.

Parson and Vic. of the same Church, &c.

And if a Parson have one Living incompatible, he cannot obtain another with Cure to be united, unless he be qualified and have a Dispensation, but that the first will be void.

Mr. Hughes in his Parsons Law puts two Cases, which he is of opinion are out of the danger of this Law. The first is, where there is a Parsonage and Vicarage endowed, and the Parson without Dispensation or Qualification accepts the Vicarage: and he conceives, that notwithstanding that these are two several

veral Advowsons and Benefices, and that several *Quare Impedit*s may be brought of them, and that several actions are maintainable by the Parson and Vicar concerning their possessions; that yet nevertheless the presenting of one person to both is no Plurality within this Statute or the Canon: because the Parson and Vicar have both but one Cure of Souls; besides there is a *Proviso* in the Act, that no Parsonage with a Vicarage endowed shall be accounted a Benefice with cure of Souls within that Act.

But his other Case seems more doubtful, and it is put where a Church has two Rectories, and each has cure of Souls *per se*, and are incompatible, and one person obtains both these Livings without qualification or dispensation. This Case he conceives to be both out of the danger of this Act and the Canon. 1. Because it is not in *pluribus Ecclesiis*. 2. When there are several Advowsons in one Church, neither Parson hath the whole cure of Souls, and the words of the Statute are, *having one Benefice with cure of Souls of the value of eight pounds takes and accepts another benefice with cure of Souls, &c.* But here the Church is one and the same, and the cure of Souls the same; and therefore as he conceives neither within the danger of the Statute or Canon: but in a private report that I have, this very

2. Rectories in
one Church.

point came in question in the latter end of the Queens time, and the Reporter Cooper verſ. ſays, that *Walmesly* and *Beaumont* were of Beauchampe. opinion, that this Caſe was within the P.37.El. C.B. *Stat.* but *Anderson* doubted, and ſeemed to incline to the contrary. *Ideo quære inde.*

*There is now a 1000 qualifications at leaſt in England by Service, beſides the Chaplains of the King, Queen, Princes of the blood, and Dowagers, and probably as many more by birth and dignities; and there are about 4300 Livings in England of 10 pound per annum in the Kings books, and upwards, and it is not the leaſt Livings the Pluraliſts catch at, though at firſt they crept into the Church, where Livings were ſo ſmall they were not able to maintain a Miniſter, and if the 41 Canon of King James were obſerved, many miſchiefs in this Caſe might be prevented. * Co.2 Inſt.627.*

By the Reſolutions of the ſeveral Caſes before mentioned it is worth obſervation, how the Judges of the Common Law have endeavoured to advance this Law, and reſtrain the qualifications: And yet when all is done this Law produces little more effect, than the transferring the power of Diſpenſations in this caſe from the Pope, and ſcattering it amongſt the Nobility and others; and how many Pluraliſts are there in England, that hardly ſee either of their Livings in a year? ſo that generally the beſt Livings in the Kingdom are ſerved with poor Curates, and no hoſpitality kept: A thing worth the Conſideration of a Parliament.

And it is to be hoped that our Noble Lords, when they conſider the great damage the Church ſuffers by Pluralities, the many poor Souls that are neglected in

in danger to perish, the great discouragement it is to Learned men, when they see many of meaner worth enjoy two Livings apiece, besides Prebends, Deaneries, *Sine Cura's*, &c. and the abler and better man, for want of Friends is never able to rise higher than a poor Curacy of twenty or thirty pound a year, when they consider how great a scandal it is to our Church, and it is to be feared, attended with a Curse; I say, it is to be hoped their Lordships will become so much Self-denyers, as to lay down this Privilege where they received it, certainly a blessing and the prayers of the poor Clergy would attend it, and if advantage should be reckoned in the case, I know none their Lordships enjoy by it, for I am bound to say that for their Lordships honour, that I do not know a Lord within the compass of my knowledge, that keeps a beneficed Clerk for his domestick Chaplain, but have Chaplains of their own, and allow them honourable stipends, and preferments in due time, but if their Lordships should not be willing to lay aside this privilege, the Archbishops that have the power of Dispensation, might remedy it in part, or in all, or his Sacred Majesty in denying Confirmation. God grant all may be done for the good of the Church.

C H A P. V.

The fifth Chapter shews what Simony is, and who shall be said to be guilty of it, and what are the dangers ensuing thereupon.

HAVING shewed my Clerk how to obtain a Benefice, and likewise those which are qualified how to take a second Living; It rests that I should shew them what is to be done after Induction to confirm them in their benefices: But because Simony is not only scandalous to the Clerk that is guilty of it, but also very dangerous; and I told my Clerk in the second Chapter, that he must obtain his Presentation without any corrupt or Simoniackal Contract; I thought it fit by the way to let my Clerk know not only what Simony is, but likewise the danger that attends it. Simony by the Canonists and School-men is defined to be, *Studioſa voluntas emendi vel vendendi aliquid spirituale aut spirituali annexum opere subsecuto.* And Thomas Aquinas says, *Quod Simonia dici videtur à Simone Maggo, qui donum Spiritus sancti emere voluit, ut ex venditione Signorum quæ per eum fierent multiplicatam pecuniam lucraretur; & sic illi qui spiritualia vendunt, con-*
formantur

What Simony is.

Panormit. c.
Nemo extra eo,
etc.

Tho. Aq. 2o. 2æ

q. 100. Art. 1.

Cro. El. 789.

Tho. Aq. *ibid.*

• Art. 4.

formantur Simoni Mago in intentione, in actu vero illi qui emere volunt: Illi autem qui vendunt in actu imitantur Giezi discipulum Helisæi, de quo legitur 4 Reg. cap. 5. quod accepit pecuniam à leproso mundato, unde venditores Spiritualium possunt dici, non solum Simoniaci, sed etiam Giezite.

And St. Gregory says, *Quicumque sacros ordines vendunt aut emunt, Sacerdotes esse non possunt, ut scriptum est, Anathema danti, Anathema accipienti, hæc est Simoniaca hæresis: Quomodo ergo, si anathematizati sunt, & sancti non sunt, sanctificare alios possunt? Et cum in Christi corpore non sunt, quomodo Christi corpus tradere vel accipere possunt? qui maledictus, benedicere quomodo potest?* And the same Holy Father farther says, *Si Presbyter per pecuniam Ecclesiam obtinuerit, non solum Ecclesia privetur, sed etiam Sacerdotii honore spoliatur.* And it appears clearly, that the very intention to buy Spiritual gifts or preferments carries with it the guilt of Simony as well as the act it self; And therefore the Holy Apostle said to Simon Magus, *Cor enim tuum non est rectum coram Deo; pœnitentiam itaque age ab hac nequitia tua, & roga Deum si forte remittatur tibi hæc cogitatio cordis tui:* But this is in foro conscientie only, and not punishable by any Humane Laws, unless it proceed to the Act.

In Registr
hab. 1. q. 12.
Canon, Qui-
cunque.

Ibid. Canon
Presbyter.

Act. Apost. c.
8. v. 21, &c.

Simony by the Canonist is distinguished
into

Division.
Canons against
Simony.

into *Simoniace* & *Simoniacus* : The first is where the Clerk comes in by Simony, whereunto he is not party or privy : *Simoniacus* is he which obtains a spiritual preferment by a corrupt and Simoniacal Contract, to which he is party or privy, and consenting.

Against this Corruption in the Church many Canons have been made, amongst which I shall instance only two, and those provincial ones of our own Nation. The first was made in the year of our Lord 1229. in the time of *Richard Wethershead* Archbishop of *Canterbury*, and is as follows.

Lindwood c.
Nulli liceat
Ecclesiam,
&c.

Nulli liceat Ecclesiam nomine dotalitatis ad aliquem transferre, vel pro presentatione alicujus personæ pecuniam vel aliquid aliud emolumentum pacto interveniente recipere: quod si quis fecerit, & in jure convictus vel confessus fuerit, ipsum tam Regia quam nostra freti autoritate patronatu ejusdem Ecclesie in perpetuum privari statuimus : but it was not sufficient by a Canon to deprive a man of his Freehold or inheritance, be the word *in perpetuum* taken for life, or for ever, as it imports; neither was this Canon ever put in execution or attempted so to be, that I find.

The other Canon I made mention of, I find amongst the Canons of *Othobonus*, the Popes Legate here in *England*, which is to this effect.

Quia

*Quia plerumque evenire didicimus, Cap. Quia
quod, cum ad vacantem Ecclesiam fuit plerumque
presentatio facienda, is qui presentandus
est prius cum patrono de certa Summa de
bonis Ecclesie sibi annuatim solvenda pa-
ciscitur, & sic pactus ad Ecclesiam presen-
tatur. S. Nos huic adui tam Simonie vi-
tium quam Ecclesie dispendium ingerenti
occurrere intendentes, universas promissio-
nes & pactiones huiusmodi penitus revoca-
mus, & eas imposterum fieri districtius in-
hibemus: Et si facte fuerint, vires aliquas
decernimus non habere.*

But this Canon was of as little effect
as the other, as to the making the Con-
tracts void, which were only determina-
ble at the Common Law, where this
Canon could not be pleaded in Bar. I
have mentioned these two Canons not
for the validity or use so much, as to sa-
tisfie the Reader, what Provincial Canons
we have against Simony, and to how
little effect they were before the Statute
of 31 Eliz. But there were some general
Canons of the Church of greater force,
whereby *Simoniace* is punished by Depriva-
tion, and *Simoniacus* by Deprivation
and perpetual disability *, not only as to
the Church he was presented to upon a
Simoniacal Contract, but also to all o-
thers: and being *malum in se*, it is not
dispensable either by the King or any
other.

Cro. El. 788,
789.
Per Warbur-
ton.

* Per Bullam
Sixtinam pri-
vatur ipso fa-
cto de omnibus
dignitatibus,
beneficiis, of-
ficiis, & effi-
citur inhabilis
ad omnia.
3 Inst. 1654-

And

Tho. Aqu. 2o.
2e. q. 100. Art.
1. Sect. 2.

St. Aug. de
hærefibus in
principio.

St. Greg. in
Reg. hab. 1. q.
1. & c. d. 1.

Stat. 31 Eliz.
cap. 6.

Stat. Against
Simony.

* Relates to
Patrons.

† This to Bi-
shops.

‡ Donatives.

* Bishops.

• Penalty.

And it has been held by some of the Fathers to be a Heresie, if not the Sin against the Holy Ghost: but neither the greatness of the sin, nor the severity of the Canons were sufficient to restrain this evil in the Church, till the Parliament of England took it into their Care, and in the 31 Eliz. it was enacted.

1. That if any person or persons for any Sum of mony, reward, gift, profit or benefit directly or indirectly, or for or by reason of any promise, agreement, grant, bond, Covenant, or other Assurance for any Sum of Money, reward, gift, profit, or benefit whatsoever directly or indirectly shall * present, or † collate any person to any Benefice with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, &c. or ‡ give or bestow the same for or in respect of any such corrupt cause or consideration, that then every such Presentation, Collation, gift and bestowing, and every admission, * investiture and induction thereupon shall be utterly void, &c.

And that the Queen, her Heirs and Successors to present, collate, &c. for that one Turn only.

And that every Person, &c. that shall give or take any such Sum of Mony, &c. or that shall take or make any such Promise, &c. shall forfeit and lose the double value of one years profit of every such Benefice. And the person so corruptly taking any such Benefice shall thereupon and from thence-
forth

forth be adjudged a disabled person, in Law to have and enjoy the same Benefice, &c.

2. And further, that if any Person shall for any sum of money, reward, &c. (ut supra) directly or indirectly (other than for small and lawful fees) or for or by reason of any promise, &c. admit, institute, install, induct, invest, or place any Person in or to any Benefice with cure, &c. That then every Person so offending shall forfeit and lose the double value of one years profit of such Benefice, &c. and that the said Benefice, &c. shall be eft soon void, &c. And that the Patron, or person to whom the advowson, &c. shall and may by virtue of this Act, present, or collate, &c. as if the person were naturally dead; but no lapse hereby to incur till six Months after notice.

3. And if any Incumbent of any Benefice with cure of Souls do or shall corruptly resign or exchange the same; or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any pension, sum of Money, or benefit whatsoever; that then the giver and taker of any such sum, &c. corruptly, shall lose double the value of the sum so given, taken, or had; the one half to the Queen, &c. and the other Moiety to him that will sue for the same, &c. in any of her Majesties Courts of Record, in which no essoin, &c.

Against Precipitate admission or Institution, &c.

Against corrupt resignations and Exchanges.

4. Pro-

*Ecclesiastical
Censures sav-
ed.*

*Simony in Or-
daining and
giving Orders
to preach.*

4. *Provided, that this Act shall not restrain any censures Ecclesiastical, &c.*

5. *And further it is provided, that if any Person shall receive, or take any Mony, Fee, Reward, or any other profit directly or indirectly; or shall take any promise, agreement, Covenant, Bond, or other assurance, to receive or have any Mony, Fee, &c. directly or indirectly, to him or themselves, or any of their, &c. Friends (all lawful and ordinary Fees excepted) for or to procure the ordaining, or making of any Minister, &c. giving any Order and License to preach, shall lose forty pounds; and the Minister so made ten pounds. And that if such Minister within seven years next after such corrupt entring into the Ministry, &c. shall accept or take any Benefice, Living, or promotion Ecclesiastical, the same Living after Induction, &c. to be void. And that the Patron may present, &c. as if the party so inducted were naturally dead; the one half of the said forfeitures to be to the Queen, &c. and the other half to the Informer, to be recovered (ut supra.)*

*Canons against
Law.*

And I do not observe that the corrupt Patrons were in danger to suffer by any Law or Canon before this Law was made; for, as I said before, his right could not be taken away by a meer Canon not confirmed by Parliament: and before this Law was made the Incumbent that

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that came in by Simony held the Living which he obtained by Simony until he was legally and judicially deprived by Sentence Ecclesiastical, wherein he often escaped for want of such proof as the Spiritual Laws required ; but this Statute strikes at the root, and makes as well the presentation, as the admission, institution and induction void : So that if this Statute had not given the presentation to the Queen , the true Patron might have presented a new Clerk ; or in his default the Church would have lapsed. But by this Act the corrupt Patron does not only lose the presentation to the King *pro hac vice* ; but also two years value of the Church, not according to the valuation in the King's Books in the First-fruit Office ; *3 Inst. 154.* but according to the true and utmost value of the Church.

But if one that has no right to present *3 Inst. 153.* shall by means of a corrupt and Simoniackal agreement present a Clerk, who is by his presentation admitted, instituted and inducted into a Church ; yet this shall not entitle the King to present : for though the Act of Parliament makes all void ; yet an Usurper cannot forfeit the right of another in whom there is no fault.

Note, that the Patron shall lose his presentation within this Law, although the Clerk be not privy to the corrupt Contract. *Co. 12. 74.*

E

And

And it should seem by the penning of this Act, that the forfeiture of the double value of the Church is incurred by the corrupt contract only; but the presentation is not forfeited to the King, unless the Clerk be *de facto* presented or collated upon such corrupt Contract.

*Clerk not privy
to the Simony.*

And it matters not whether the Incumbent that comes in by a Simoniackal contract were privy thereunto or not, as to making the Church void; but the great question is, whether the Clerk that is presented upon a Simoniackal contract, to which he is neither party nor privy, be disabled for that turn to be presented by the King to that Church.

*Fowler vers.
Laphorn P.
17. Jac. B.R.*

I have seen the Report of a Case in the latter end of the Reign of King *James*, where it was adjudged, that if a Clerk were presented upon a Simoniackal Contract to which he was not party or privy, that yet notwithstanding it was a perpetual disability upon that Clerk as to that Living.

Gro. El. 788.

And in the Case of *Baker and Rogers*, M. 42 and 43 *El. B.R.* The case was, *Baker* agreed, the Church being void, to give the Patron 180 *l.* for the Presentation, who presented his Brother, who knew nothing of the corrupt Contract till after Induction: and though it was clear, that the grant of the Presentation during the vacancy

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cancy was meerly void, and that *Baker* presented as an Usurper; that yet notwithstanding the Clerk was in by the corrupt Contract; because it was not to be intended, that the Patron would have suffered the Usurpation, had it not been for the corrupt Contract: and there it should seem by Mr. Justice *Warburton*, that the Clerk was disabled *quoad hanc*.

And in a Cause between the King and the Bishop of *Norwich*, *Cole* and *Sair*, Sir *George Crook*, who was a Council in the cause, reports, that Sir *Edward Cook* affirmed it had been adjudged, that if a Church be void, and a stranger contracts for a Sum of Mony to present one who is not privy to the agreement, that notwithstanding the Incumbent coming in by the Simoniackal contract, is a person disabled to enjoy that Benefice, although he obtain a new Presentation from the King; for the Statute, as to that Living, has disabled him during life.

Cro. Jac. 385;
Bulst. 3. 92.

I must acknowledge, if the Law be so taken, it is very severe; but let us hear Sir *Edward Cook* himself speak, and he in his Comment upon this Statute says, that it was adjudged in the before-mentioned Case of *Baker* and *Rogers*, that where the Presentee is not privy nor consenting to any such corrupt Contract, as is forbidden by this Statute (because it is no Simony in him) there the Presentee shall not be ad-

3 Inst. 154.

judged a disabled person within this Act; for the words of the Statute are (*And the person so corruptly giving*): So as he shall not be disabled, unless he be privy to the Contract; and so says he there it was resolved. *M.13 Jac.*

Co.12.101.
3 Inst.154.

And Sir *Edward Cook* in that Book, that goes under the name of his *twelfth Report*, and without doubt was his own, reports, that it was so adjudged in the case of Doctor *Hutchinson Parson* of *Kenne* in *Devonshire* by the whole Court, that if a Clerk be presented upon a corrupt contract within this Statute, although the Clerk be not privy thereunto; yet the presentation, admission and induction are all void within the Letter of the Statute: for the Law intended to inflict punishment upon the Patron, being the Author of this corruption, by the loss of his presentation; and upon the Incumbent, who came in by such a corrupt Patron, by the loss of his Living, although he never knew of the corrupt Contract; but if the Presentee were not cognizant of the corruption, then he's not within the clause of disability within the same Statute; and so (says he) was the opinion of all the Judges of *Serjeants-Inne* in *Fleetstreet*. *Mich.8 Jac.*

And it seems to me upon the penning of the Statute, that this opinion is more rational than the former, for the words of

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of the Statute are ; *That the Person so corruptly taking, procuring, seeking or accepting, shall, &c. from thenceforth be adjudged a disabled Person in Law to have or enjoy, &c.* And though the Incumbent in this case take and accept the Benefice upon the corrupt Contract, yet as to him it is not corruptly taking. But this being a point thus controverted, I shall not take upon me to determine, but leave it to the Judgment of the more learned.

Quere.

I shall in the next place shew what Contracts have been held Simoniacal within the meaning of this Law.

What Contracts shall be said Simoniacal.

In a Cause between Doctor *Graunt* and one *Bowden*, it was held (upon an Evidence to a Jury) that where two Parsons agreed to change their Livings, and the one promised his Patron that if he would present the other with whom he was to exchange, that he should make the Patron a Lease of his Tithes at such a Rent; and this was held Simony, although the other was not privy to the Contract, he making the Lease after.

Hill. 16 Jac.
ro. 667. C.B.

The Father in the presence of his Son being a Clerk, purchased the next advowson of a Church, the present Incumbent of the Church being sick, and not likely to live, who soon after died, and he presented his Son: and this was held Simony within this Statute; but if this had been done in the absence of his Son, it had not

More 916.
Cro. El. 685.
Smith vers.
Shelburne.

been Simony, because the Father is bound to provide for his Son. *Quere* of the difference.

Winch.63.
Sheldon ver f.
Brett.

And by *Hutton* it was held Simony to purchase the next Advowson, the Incumbent being sick.

Hob. 165.

In the Case of one *Winchcombe* against the Bishop of *Winchester* and *Puleston* the case was, one *Say* bargained with the Patron (the Incumbent being sick) for ninety pounds to present him when the Church should be void, and for the better assurance took a Grant of the next avoidance to Friends in trust; the Incumbent died, *Say* was presented, and this was held Simony within this Law.

Bonds for Resignation.

There is of late time a practice introduced by corrupt Patrons, that, if not nipt early in the budding, will make this good Law of no effect; I mean the taking Bonds for resignation. And this practice took its rise from two cases in *Sir George Crook's Reports*.

Cro. Jac. 248.
274.

The first was between *Jones* and *Laurence*, 8 Jac. The Case was thus: *Jones* had a Son which he intended to be a Clergy Man, and having obtained a Presentation from *Queen Eliz.* for the Church of *Streetbam* agreed with the Defendant that he should be presented, so that he would resign when *Jones's* Son was qualified for the Living; whereupon the Defendant entered into a Bond of a thousand Marks

Marks penalty to the Plaintiff upon this condition (having first recited the agreement) that if the Defendant within three Months after request should absolutely resign his said Benefice, that then &c. And in an action of debt brought upon this Bond the Defendant pleaded *non requisivit*, which was found against him; and in arrest of Judgment it was moved, that this Bond was made for the performance of a Simoniackal contract, and therefore void; but notwithstanding the Court gave Judgment for the Plaintiff, and two reasons are given for the Judgment; the first was because there was no averment of the Simony, the second that it was not material as to the Bond, because that Statute did not make the Bond or Contracts void but only the presentation, &c. for this I clearly infer from the conclusion of the case. But I confess the sense of the Court was, that in truth if a man be preparing a Son for the Clergy, and have a Living in his disposal which falls void before his Son be ready, he may lawfully take a Bond of such person as he shall present to resign, when his Son is become capable of such Living; and I have nothing to say against that opinion, but it is very just and reasonable, Nature obliging that every one should take care for his posterity: but if a Patron take a Bond absolutely to resign

Cro.ubi supr.

upon request without any such cause as the preferment of a Son, or to avoid pluralities, or non-residence, or such reasonable cause, but only to a corrupt end and purpose to exact money by this Bond from the Incumbent, or attempt it, though perhaps the Bond may be good against the person that entered into it; yet I am clear of opinion for my own part, that the said Bond makes the Church void, and gives the presentation to the King; and it should seem in *Jones and Laurence's* case, that if Simony had been averred, it would have been left to a Jury to have adjudged what the intention of the corrupt Patron was.

Cro. Car. 180.
Hur. iii. Jones
228.

The other case upon which these subtil Simonists build, was between *Babington and Wood*, 5 Car. 1. B.R. where the Case was likewise in debt upon an Obligation with a Condition, that whereas the Plaintiff intended to present the Defendant to such a Living, that if the Defendant upon request after his admission should resign, that then the Bond to be void, &c. Upon Oyer of this Bond and Condition, the Defendant demurred, and Judgment was given for the Plaintiff; But all the Court conceived, that if the Defendant had averred, that the Obligation had been made with intent to exact money, make a Lease, &c. which in it self had been Simony; then upon such a Plea

Plea peradventure it might have appeared to have been Simony, and then it might have been a question, whether the Bond had been good or no; but upon this Demurrer it did not appear there was any Simoniackal Contract, and such a Bond might be made upon a good and lawful design, as the preferment of a Son, as in *Jones and Laurence's Case* before, to avoid non-Residence, Pluralities, &c. So that it appears by both these Cases, that Bonds taken upon prudent and just ends to resign are non-Simoniackal; but where such Bonds are taken upon corrupt designs, and it be made appear by any subsequent practice or action, it is clearly Simony, as if the Bond had been expressly to pay money; for what difference is there between a Bond expressly to pay money, and a Bond to resign, which is to pay money, if the Patron say, either pay me so much or resign, when all the world knows in such a Case the Parson must pay the money, or resign and be undone? And the world shall never perswade me, that those Reverend Judges that gave these Judgments ever intended further: and I hope that those Reverend Judges, that now supply their places, will discountenance and discourage such practices that tend so much to the ruine of the Church and Religion; for I know no Law that tends more to the advancement of learned and religious men

men than this Law doth, and therefore ought to have a benign construction to the end it was designed.

Noy 22. T.
15 Jac. 10.
2051. C.B.

I find a Case reported, I cannot say that it is by an Authentick hand, but such as it is I will give it the Reader; it was between Sir *John Pascall* and one Clerk in the 15th year of King *James*, upon evidence to a Jury it was held, that such a Bond was Simoniackal, but the Circumstances not appearing in the Book, the Case can be of no great Authority.

But before I shake hands with these Bonds for Resignation, it will be convenient I give my young Clergy-man some cautions against them; for it is an old saying, the Resetter is worse than the Thief, for without Resettlers there would be few Thieves.

*Advice against
Bonds for Re-
signation.*

And 1. I hold it a great disreputation for any Clergy-man to give any such Bond, which may have the least tincture of Simony; nor do I believe any man of worth will do it, unless it be upon such reasons as aforesaid.

2. If such Bond carry with it a Simoniackal corrupt design, it makes the Clerk no less guilty of Simony than the corrupt Patron; and then the Clerk not only loses his Living by this Statute, but is for ever incapacitated to have it by any future Presentation, and by the Canon-Law is
to

to be degraded and incapacitated to all other. *C. 1. q. 1. Presbyter si, &c.*

Concil. Re-
mens. si quis
vendiderit.
3 Inst. 153.
Margine No 72.

Lastly, If he do not resign upon request, he is subject to the whole penalty of the Bond; for Simoniack Bonds, Contracts, &c. are not made void by this Act, but only the Presentment, &c. And so you may observe a difference between *malum in se*, and *malum prohibitum* by the Statute, or by the Canon-Law, whereof the Judges at Common Law take no notice.

These Bonds for Resignation are become so frequent, that hardly a Living passes, unless by Persons of Honour, without them, and very ill use is made of them. There's a poor Vicar in my Neighbourhood that has a Vicarage but of 40 *l. per annum*, and was forc'd into one of these Bonds to obtain it, and his Patron takes from him Tithes of half the value of the Church, and he dares not question him for them; *Opus est medico*. It is time for the Clergy to prefer a Bill in Parliament, not only to make all such Bonds void, but likewise all Bonds, Bills, Covenants, Promises, Judgments, Statutes and Recognizances, made or entred into upon any Simoniack contract. Certainly no good man would oppose it; a fit undertaking for my Lords, the Bishops.

*What Covenants
and Agreements
are within this
Law.*

Ero. Car. 425.

It is now to be considered, what Covenants or Agreements shall be said to be Simoniacal within this Law.

If a Father-in-Law upon the marriage of his Daughter covenant with his Son-in-Law without any consideration, but voluntarily, that when such a Church falls void, which is in his gift, that he will present him to it, this is no Simony within this Law; but it should seem, that such Covenant in consideration of marriage, or any other consideration, had made it Simoniacal.

**Noy 142.
Baker vers.
Mountford.**

So where the Patron took a bond from the Presentee to pay 10 *l.* yearly towards maintenance of his Predecessor's Son, whilst he remained in the University unpreferred, was held no Simony: And in that case it was said by *Foster* Justice, that it was adjudged in the Earl of *Sussex's* case, where the Patron took a bond of the Incumbent to pay 5 *l. per annum* to the Widow of his Predecessor, it was not Simony; these were good charitable Resolutions; *sed quere rationem inde*; and *Foster* said, that notwithstanding great opposition in that case, the Parson enjoyed the Living at that time.

In the next place it will be fit to consider, what Church-preferments are within this Law; the Statute only names Benefices with cure of Souls, Dignities in the Church, Prebends and Livings Ecclesiastical.

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cal. The word Benefices with Cure of Souls seems chiefly aimed at Parsons and Vicars in Churches parochial: Dignities comprehend Archbishops, Bishops, Archdeacons, Deans, Chancellors, Treasurers, Chaunters, Precentors, Officials, &c. For Dignities Ecclesiastical are defined by the *Civilians* to be *Administratio cum Jurisdictione aliqua conjuncta*. And Lindwood tells us, *Dignitas cognoscitur altero de tribus modis, primo quando beneficium habet administrationem rerum Ecclesiasticarum cum Jurisdictione: Secundo ex eo quod habet nomen dignitatis cum prerogativa in choro & capitulo: Tertio quando constitutio vel consuetudo Ecclesie habet, quod beneficium habeatur & reputetur pro dignitate.*

2 Inst. 155.

Lindwood
cap. ut Clericali
verb. dignit.
Duarinus de
sacris Eccles.
ministr. & be-
neficiis. lib. 2.
c. 6.

Lindw. cap.
Esurientes a-
varitia verbo
dignitate.

And in another place speaking of Dignities he says, *Proprie loquendo de dignitate ordo Episcopalis dicitur dignitas, sic Abbates, Priores conventuales, & officiales Episcopi, dicuntur dignitates, & in inferioribus Episcopo jus non imponit nomen dignitatis, nisi Archidiaconis, & Archipresbyteris, propter Jurisdictionem, & preeminentiam, quas habent super alios: Imò licet (says he) Archidiaconi nullam haberent Jurisdictionem ex consuetudine, tamen ratio nominis sonat in dignitatem, &c.*

Cap. ut Clericali
verb. digni-
tatis.

Prebends are particularly named, and Livings Ecclesiastical are words of a large extent, and draw in Donatives within

Fletcher vers.
Machaller T.
7 Gar. 1. B.R.

within the penalty of this Law, as hath been adjudged, though they have no cure of Souls.

Having held the Reader something long in my discourse upon the matters relating to the first paragraph of this Statute, I shall after some general Observations upon it draw to a conclusion.

Who may take advantage of Simony, quod nota.

*Sir Jo. Rowse
vers. Wright.
P. 17. Jac.
Hob. 167,
168, 177.*

Contract not executed.

Hob. 167.

*Simonist dies
possessed, if the
K. lose the turn.
Hob. 166.*

And first it is to be observed, that where any Clerk is in by Simony, or any other dignified person, every stranger as well as the King may take advantage of it: and therefore if the Parson, Vicar or other dignified person shall bring any action for the Tithes or other things belonging to his Church; the Defendant may avoid the action by proving, that the Plaintiff obtained his preferment by a Simoniackal Contract.

And note, that a Simoniackal Contract, where the party is not presented in pursuance of it, is not within the penalty of this Law; but it should seem, that if one that has no right present a Clerk upon a Simoniackal Contract, he is within the penalty though an Usurper, but not, as hath been said, to give the King the Presentation.

It hath been a question, If the Clerk which comes in by Simony die in possession of the Church, whether the King should lose his Presentation: but it hath been resolved that he shall not; for the Statute

Statute makes the presentation, admission, institution, and all void; so that the Church was never full of an Incumbent, & *nullum tempus occurrit Regi*. But if the King suffer an Usurpation by the Patron or any other, presenting another Clerk, who is instituted and inducted, and after dies incumbent, in such case the King loses his presentment; and so it should seem if the Incumbent resign, or be deprived, the Church having been once full.

And note, there may be Simony, and neither Patron nor Clerk consent or be privy to it; and yet the Church for that turn is by Statute given to the King: if the Clerk be presented by the means of such corrupt Contract, though neither Patron nor Clerk were privy or consenting to it; so the King, though he himself cannot be guilty of Simony, may present upon a Simoniackal Contract between others, and such presentation is void by this Act.

Simony and Patron and Clerk free.
Bath vers.
Potter, p. 174
Jac. B. R.

Suppose a Clerk be presented upon a Simoniackal Contract, and then the King or Parliament, that is, the King in Parliament with the Assent of his Lords and Commons, pardons all Simony by express or general words, though this may pardon the Penalties, yet the Church remains void.

Pardon of Simony the effect.
Lea vers.
Smith M. 40,
& 41 El. C. B.
contra.

Hob. 167.

*De ministeriis
et hab. l. 9. l.
Canon cum
ordinar.*

*3 Inst. 155.
The reason of
the Paragraph
against precipi-
tate Admiss.*

I shall now conclude this paragraph with the saying of a holy Father of the Church, viz. St. Ambrose upon this Subject: *Cum ordinaretur Episcopus quid dedit? aurum fuit: quid perdidit? anima sua fuit: Cum alium ordinaret quid accepit? aurum fuit: quid dedit? Lepra fuit.*

I am now come to the second paragraph of this Statute, which Sir Edward Cook (who was a Member of this Parliament) tells us was added to avoid hasty and precipitate admissions, institutions and inductions, &c. to the prejudice of those that have right to present, and thereby putting them to their actions to recover their rights, and there are seldom bribes (as I may say) in this case given, where the Patron has a good and sure Title.

The taking or giving above the usual Fees in this Case is as well dangerous to the Clerk as the Officer: for the Church shall be void, so that the Patron, that has right to present may present again; and the Usurper and Officer, that takes more than his Fees for such expedition, forfeits double the value of the Benefice for a year, not according to the rate in the first-fruits Office, but according to the very true value: but upon this Clause no disability rests upon the Incumbent, but that he may by the true Patron be presented again; nor lapse, till after six months from

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from the time of notice given by the Bishop, &c.

And observe the penning of this clause: *When the Church shall be ipso facto void.* it is not that the Church shall be *ipso facto* void, or that the Institution, &c. should be void; but that it shall be estsoons void, and that the Patron shall present, as if the person were naturally dead: so that it should seem the Church is once full by this institution and induction; and hence there may some doubts arise, whether the Church shall be void *ipso facto*, or whether it must be avoided by Ecclesiastical Sentence of Deprivation: but it seems to me, that the Patron may present immediately without any Sentence Ecclesiastical.

3. The third Paragraph of this Statute is made against such as shall corruptly for money, pension, or other benefit, resign or exchange their Livings with any other: in that case as well the giver as the taker forfeits double the Sum of money, &c. given and received; but this clause works no avoidance or disability in the person that is guilty. *Resignation and Exchanges Simoniackal.*

The fourth Paragraph preserves the Ecclesiastical Jurisdiction, that they may proceed judicially to censure the Parties for their corruption in buying and selling Church-preferments: wherein as should seem the Ecclesiastical Laws in some circumstances are more severe than this Statute; for by that Law, as I take it, he

Cro.El.788,
789.

that is convicted of Simony, is after incapacitated not only to that Living, but to all other Church preferments; but of this be informed by the Canonist. But I know no reason, why those corrupt Patrons, that take bonds for resignation without any reasonable cause apparent, may not be called to an account before the Ordinary, and punished by Ecclesiastical censures, if it appear they were taken to any corrupt end, or if afterwards he shall endeavour to exact mony by colour of any such bonds.

*Corrupt giving
Orders and
Licenses to
preach.*

I am now come to the last Paragraph of this Statute, which is also a two-edged Law, that punishes as well the giver as taker of greater fee or reward than the ordinary and just fees for, or for procuring any person to be ordained or made a minister, or giving any order or license to preach, &c. but is more severe upon the Clergy-man than the Officer; for the Officer only forfeits forty shillings, but the Clergy-man forfeits ten pounds, and all the Livings he shall take within seven years, are made void by this Law after Induction; so that for seven years an Incapacity lies upon the Clerk; how careful ought Clergy-men to be, what Fees they give for their Orders? And note the manner of the penning of this paragraph, that the Church shall not be void till after Induction. The first Paragraph makes the pre-

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presentation, institution and induction, and all void: So that the Church in that case is never full. The second Paragraph makes it void, not till after the corrupt admission, institution, installation, induction, investiture or placing; and this not till after induction; by which means the Grantee of the next avoidance that presents such Clerks, cannot present again: and so it is where the Patrons present by turn, the presenting such a Clerk will satisfy a turn, if inducted. Co. 5. 102. a.

Lastly, observe all pecuniary forfeitures and penalties within this Statute are given to the King and Informer, and are to be recovered by Bill, Plaint, Action of Debt or Information in any of his Majesties Courts of Record; that is, the Chancery, Kings Bench, Common Pleas, and Exchequer at Westminster; but not in any inferiour Court of Record, and no effoin, privilege, protection or wager of Law is to be allowed; but I conceive the privilege or protection of Parliament are not intended in these general words, but the common protections and privileges of Officers and Courts. *Ideo quere inde.*

How the forf. are to be recovered.

Gregory's case, Co. 6. 20.

Quere: See a Canon against it, and what Fees shall be taken by the Clerks.

Lindw. c. 1.
seva & misc. rabili.
Mat. 10. v. 8.

It is not proper for this discourse to examine by what Authority any thing at all is taken for giving Orders, Admissions, Institutions, &c. Since our Saviour says, *Gratis accepistis, gratis date:*

However since it is a thing (I doubt) too much practised, use has made it seem lawful, by which means it is swallowed as a due fee without examination of the matter, I shall therefore put them that are concerned in mind of two other Canons, and then leave the matter to further consideration, and amongst those Canons, that are called the Canons of the Apostles, I shall find one to this effect:

Can. 30.

Si quis Episcopus, aut Presbyter, aut Diaconus, per pecuniam hanc obtinuerit dignitatem, deiciatur, & ipse ordinator ejus à communione omnibus modis absceindatur.

And in the Council of Chalcedon to the same effect, which follows:

Si quis Episcopus per pecuniam Ordinationem fecerit, & pretium redegerit Spiritus Sancti gratiam quæ vendi non potest, Ordinaveritque per pecuniam, Presbyterum, aut Diaconum, vel quemlibet de hiis, qui cognominantur in clero, promoverit, & dispensatorem aut defensorem, vel quemlibet qui subiectus est regulæ, pro sui turpissimi lucri commodo, is qui hoc attentare probatus fuerit, proprii gradus periculo subiacebit, & qui ordinatus est, nihil ex hac Ordinatione, vel promotione quæ est pro negotiatione facta proficiat, sed sit alienus à dignitate, vel sollicitudine, quam pecuniis acquisivit, &c. Concil. Cabilonense, ca. 16. ad eandem sententiam.

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But it may be it will be said, that these Canons are against selling of Orders, but not against ancient and just fees, to which hear what the Council of Orleans says:

Nè quis Episcopus quibuscumque causis vel Can.3.
Episcoporum Ordinationibus ceterorumque
Clericorum aliquid accipere presumat,
quia sacerdotem nefas est cupiditatis vena-
litate corrumpi.

And the Council of Lateran under Pope Innocent the Third decreed, *Nè pro consecrationibus Episcoporum, aut benedictionibus, aut ordinibus, aliquod accipiatur.* And to the like effect is the Council of Braga, ca.4. Can.63.

And our own Canons are to the same effect, and limit the Clerks fees to twelve pence for Letters of Institution and Collation, and six pence for Letters of Orders: But he that has a mind to satisfy himself herein further, let him read that most excellent History of the Council of Trent, which is faithfully translated by Sir Nathaniel Brent, where this point is excellently discussed *Pro* and *Con*, where I will leave my Reader and conclude this Chapter, and in the next place shew my Parson, Vicar, &c. what he is to do before, at, and after, his Admission, Institution and Induction. Cap. Sæva & Miserabilis. Pag. 492, 493, 494, &c.

C H A P. VI.

The Sixth Chapter shews, what a Clerk is to do before, at, and after his admission, institution and induction, to make him a compleat Parson.

Every Parson and Vicar must be a Priest.

Stat. 14 Car. 2. cap. 4. Subscription and Certificate.

13 Eli. cap. 12.

Read Prayers.

Read the Articles.

Stat. supra.

NO man at this day is capable to be Parson, Vicar, &c. before he is a Priest in Orders, which he cannot be before he is four and twenty years of Age, as has been said; and if any Person shall be admitted, instituted and inducted into any Living before he is in Holy Orders, his admission, institution and induction are void by the late Act of Uniformity; Secondly, he must make his Subscription according to the said Act, and have a Certificate from the Bishop or, &c. under his Hand and Seal that he hath so done; and then within two Months after he is inducted, he must during Divine Service (that is, after some part of the Divine Service of the Church for that day appointed is read, and before the whole is finished) read the nine and thirty Articles of Religion in the Parish Church, &c. into which he shall be inducted, and declare his unfeigned assent and consent to all that is therein contained; and in de-

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default herein the Church is *ipso facto* void without any sentence declaratory; Co.6.29.b. and it is not enough for him to declare his assent to them so far as they are agreeable to the Word of God, or with any 4 Inst.324. qualification, but positively.

And he must likewise upon some Sunday or Lords-day, within two Months after actual possession of such Benefice, &c. (which is intended within two Months after induction or installation, &c.) read the Book of *Common Prayer* (that is, the whole Service of the Church appointed for that day, as it is there appointed) and likewise declare his assent and consent to all the matters and things therein contained in these words; I A. B. *do declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the Book intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the form or manner of making, Ordaining and Consecrating of Bishops, Priests and Deacons.*

Stat. supra.

Declaration.

And such Parson, Vicar, &c. must within three months after his institution, upon some Lords-day, during divine Service (that is, as has been said, after some

Stat. 14 Car.2. cap.4.

part of it be read, and before all be read) publickly and openly read his Certificate from the Bishop, &c. of his subscription to the Declaration following; and he must at the same time read the Declaration or Acknowledgment it self in the Church where he is to officiate before the Congregation there assembled. The Declaration follows:

I A. B. declare, that it is not lawfull upon any pretence whatsoever, to take arms against the King; And, that I do abhor that Treasonable position of taking Arms by his Authority against his person, or against those that are commissioned by him; And, that I will conform to the Liturgy of the Church of England, as it is now by Law established. And I do declare that I do hold, there lies no obligation upon me, or on any other person, from the Oath commonly called the Solemn League and Covenant, to endeavour any change or alteration of Government either in Church or State; And that the same was in it self an unlawful Oath, and imposed on the Subjects of this Realm against the known Laws and Liberties of this Kingdom.

And if any Parson, Vicar, &c. fail in the doing of any of these things before-mentioned, or any of these things be neglected, the Church becomes void; and the Clerk that makes such failure, in

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case he shall sue for his Tithes, or any other Church-duty, or other thing belonging to his Church; if the Defendant insist upon it, must prove the doing of all these things: But usually the Judges in favour of the Clergy, after they have been in possession of their Livings ten or twenty years, or any considerable time, will presume all these things regularly done, and will not put the Parsons, &c. to the precise proof of them. Dyer 346.p.7.
Co.6.29.b.

And it is to be observed, that the Parsons, Vicars, &c. must upon the acceptance of every new Living or Ecclesiastical preferment within this Law repeat all these things; for the performance of all these things upon the taking of one Living will not satisfy for any other. *Advice to the
Clergy.*

I shall give my reverend Clergy-men therefore this caution, that if any of them have accepted any Ecclesiastical preferments, and have negligently omitted any of these things, and that thereby they may be lapsed to the King, that they obtain presentations from the King *ad Corroborandum*; and that thereupon they perfect all their former neglects.

And for the future I advise them, that they first have some credible Witnesses present, when they make their Subscriptions before the Bishop; and that they attest the Bishops Certificate; and that they
get

get two Books of Articles; and that when they read the thirty nine Articles, they give one of those Books of Articles to some credible Parishioners to read with them, and then attest the Book, that they were present, and heard the Clerk read the said thirty nine Articles during the time of Common Prayer, and declare his unfeigned assent and consent to all the matters and things therein contained, by subscribing their names thereunto; and that the Clergy-man keep safely the said Book of Articles with this attestation.

And I advise, that when he reads the Book of Common Prayer, which must (as above is said) be read Morning and Evening, in all things which is prescribed therein, within two months after induction; that he likewise make some intelligent Parishioners to read with him, and give them a Copy of the Declaration aforesaid, and at the foot of it take an attestation under their hands of his reading the said Book of Common Prayer and Declaration, which may be done in this form.

First, in a fair legible hand write the Declaration aforesaid, then write under to this effect,

Memorand. *That upon Sunday the*
Day of *in the Year of our Lord.*
A.B. Parson of D. in the
County

County of D. read Common Prayers in the Parish Church of D. aforesaid, both in the forenoon and afternoon of the same day, according to the Form and Order prescribed and directed by the Book intituled, The Book of Common Prayer, and Administration of the Sacraments, and other Rights and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, the Form or manner of making, Ordaining and Consecrating of Bishops, Priests and Deacons; and immediately after the reading the same, made a Declaration of his unfeigned assent and consent, to all the matters and things therein contained in the Form and words above written: And then let the Witnesses hereunto subscribe the same Certificate; which the Clerk is to keep carefully with his Institution, induction and Certificate, with the Book of Articles attested, as is above directed. And in these things I advise all Clergy-men to be very tender and careful.

There was an Act made in the thirteenth year of Queen Elizabeth; That none should be admitted to any Benefice, unless he were three and twenty years of age, and a Deacon at least, and should subscribe the thirty nine Articles before he should be admitted; and that none should

13 El. cap 12.

What age a Parson ought to be of.

be

be admitted to Preach or Administer the Sacraments, unless such Persons were 24 years of age at least: But this Law is in part altered by the beforementioned new Statute of Uniformity; for now none can be admitted to any Living till he is a Priest in Holy Orders, which he cannot be by this Statute till he is four and twenty Years of age.

Who may be admitted to a Benefice of 30 l. per annum in the Kings Books.

And by the same Statute it is enacted, that none should be admitted to any Benefice with cure of Souls of the value of thirty pounds or upward in the Kings Books, unless he be a Batchelor of Divinity at least, or a Preacher licensed by some Bishop, or one of the Universities of this Kingdom; and if not so qualified his Institution to be void.

C H A P,

C H A P. VII.

The Seventh Chapter shews the duty of the Parson, Vicar, &c. after Induction, and the former Ceremonies performed; and treats of non-residence, and the penalties thereof, and for what reasons the same may be excused.

HE that has orderly, as aforesaid, obtained an Ecclesiastical preferment in the Church of England, must be conformable to the Government and Orders thereof, and must not use any other publick Form of Prayer, than what is prescribed by the Book of Common Prayer before mentioned, neither must he administer the Sacraments of Baptism and the Lords Supper in any other manner or form, than what is therein and thereby directed and prescribed.

Parsons, &c. must be conformable.

Stat. 1 Eliz. cap. 2.

And if any Incumbent be resident upon his Living (as he ought to be) and keep a Curate, he is bound by the Act of Uniformity once every month at least to read the Common Prayers of the Church, according as they are directed by the book of Common Prayer, in his Parish Church in his own person, or he forfeits 5 l. for every time he fails

Stat. 14 Car. 2. cap. 14.

When, and how oft he must read the Common Prayers.

fails therein. See the Statute how he is to be convicted, and the penalty to be levied.

*Before every
Lecture.*

And the Common Prayer by that Statute is to be read before every Lecture: and it is not sufficient to read a piece here, and a piece there, where the party pleases; but they must read the whole appointed for the day orderly, as it is appointed with all the Circumstances and Ceremonies of kneeling and standing, as is prescribed, otherwise it is no reading of Common Prayers within this Law; quod nota.

*Stat. 14 Car. 2.
cap. 4.*

And note, that by the late Statute of Uniformity, the former Statutes for Uniformity and Penalties therein are extended to this Book of Common Prayer now lately established.

*Stat. 1 Eliz.
cap. 2.*

And by the Stat. of 1 Eliz. It is enacted, That if any Minister, that ought or should sing or say Common Prayer, &c. refuse to use the same Common Prayers, or to administer the Sacraments, &c. in such order and form as they are mentioned and set forth in the Common Prayer Book, or shall wilfully or obstinately standing in the same, use any other Rite, Ceremony, Order, Form or Manner of Celebrating the Lords Supper, or other open Prayers, or shall preach, declare or speak any thing in derogation or depraving of the same Book, or any thing therein contained, &c. upon Conviction the Party guilty of any of these offences forfeits the profits

*The Penalty
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profits of all his Livings and Spiritual Promotions for a year, and is to suffer Imprisonment for six months without bail or mainprize; and upon a second Conviction for the like offence he is to suffer imprisonment for a whole year, and be deprived ipso facto of all his spiritual promotions; and upon a third Conviction for the like offence shall be imprisoned during his life, and lose all his Spiritual promotions, if he have any: And if such person have no spiritual promotions, then for the first offence he is to be imprisoned for a year, for the second during life without bail or mainprize.

I have been the briefer in these matters upon the Statutes of Uniformity, because they are printed at large before the book of Common Prayer, to which I refer the Reader for his fuller satisfaction; and they are so plain and full, that they need no Comment, but to advise all Clergy men to read and observe them cautiously.

I shall only give the Reader this further caution, That if any Parson, Vicar, &c. shall maintain any Doctrine, contrary to the thirty nine Articles of Religion, it is cause of Deprivation; or if he administers the Sacraments in any other Form than is prescribed by the Book of Common Prayer, he forfeits 100 *l.* by a Statute made in the 13 year of Queen *El.* And by the new Statute of Uniformity this

13 Eliz.c.12.

this penalty is extended to such as do it contrary to the present book of Common Prayer now used.

*Page 217. in
the English
Translation.*

*Non-Residence
when it came
into the
Church.*

*The same hist.
p 217 &c.
486, &c. 509,
&c. 496.
Residence Ju-
re Divino.*

The next Duty incumbent upon the Parsons, Vicars, &c. is, that they be resident upon their Cures, a Duty incumbent upon every one, that hath the cure of Souls in the Church of Christ; for, as *Padre Paulo* in his most excellent History of the Council of *Trent* observes, that in the first 700 years after Christ, there was not any such thing known in the Western Church, that any man should have an Office or Title in the Church, and not do the duty; and many Canons and Decrees have been made against non-residence: And in the Council of *Trent* it was held by much the greater and better number of the Prelates and Fathers in that Council, that Residence was *Jure divino*, and undoubtedly had been so decreed, if the Pope had not used all his old Stratagems against it; but whilst the Pope had power to dispense with residence, all the Canons and Decrees of that Church were of little greater effect than to fill his Coffers with money; for in this Kingdom, how many Bishopricks, Abbies, Priories, &c. were enjoyed (I mean the profits of them) by Forreigners, that never saw them, or took any care of their duties? I should be glad if it were much better now.

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The Canons of *England* always complained against Pluralities and Non-Residence, and in the Parliament held 2 H. 4. The Commons prayed, that all such as procured from *Rome* (for in those days they came from *Rome*) any Bulls for Pluralities or non-Residence, should incur the pain of Provisoes, except the Chaplains of Archbishops and Bishops, and Schollers; and those that had any Bulls should cancel them.

The exact Abridgment of Records, nu. 50.

And in the Parliament held 8 H. 4. the Commons petitioned that the King might have a moiety of the profits of all Benefices where the Incumbent was Non-resident.

Ibid. 8 H. 4. num. 113.

The like was prayed in the Parliament in 9 H. 4.

Ibid. 9 H. 4. num. 70.

In the Parliament 4 H. 6. it was prayed by the Commons, that all Parsons and Vicars, and others having cures, and not being resident thereupon, should forfeit their Benefices, the one half to the King, and the other half to the Patron.

Ibid. 4 H. 6. nu. 38.

In the Parliament held the same year the Commons prayed, that for the Non-residence of the Incumbent the Patron might present a new Clerk; and great reason in my Judgment, and very agreeable to the Rules of the Common Law, where a Temporal Officer loses his Office for non-user; And I know no reason why

Ibid. 4 H. 6. nu. 31.

it should not be so in Spiritual Offices; where the Souls of a many poor people are neglected. But these had none of them the good fortune to be reduced into Laws; but I presume these complaints in Parliament so awakened the Pope and Clergy, that there was some reformation; for I find no more complaints in Parliament concerning this matter, till the 21 H. 8. in which Parliament it was enacted;

21 H. 8. cap.

13.

*Act against
non-Residence.*

That as well every Spiritual Person then being promoted to any Archdeaconry, Deanry or Dignity in any Monastery or Cathedral, or other Church Conventual, or Collegiate, or being beneficed with any Parsonage or Vicarage, as all and every spiritual Person, which then after should be promoted to any of the said Dignities or Benefices with any Parsonage or Vicarage from the Feast of St. Michael then next following, should be personally resident and abiding, in, at, or upon, his said Dignity, Prebend or Benefice, or one of them at the least; and that if any such person wilfully absented himself from his said Benefice, &c. by the space of a Month at one time, or two Months at several times in any one year to be accounted at several times; that such Person so absenting himself should forfeit 10 pounds for every such default, the one half to the King, the other half to the Informer to be recovered, as is expressed in the Act.

And

And by the same Act, there is a Proviso worth mentioning, though now out of date, to this effect:

That if any Person should procure any Dispensation from Rome or elsewhere to be non-resident, the Party guilty should forfeit twenty pounds. By this and other Statutes mentioned in this book it is evident, that the Parliaments of England, even when the Pope was in full power, often made bold with his Holiness to correct his, and his Courts corruption.

Certainly this was an excellent Law, if there had been no more in it but the dispensing with such persons as by the same Law are qualified to have two Livings; and the persons capable to qualifie Chaplains to have pluralities had not been grown so numerous, that there are but few of the best Livings but they are held by Pluralists, and they either by colour of attending their Lords, their Deaneries or Prebends, find an excuse to be non-resident, which has made this Law of little effect; nay, I doubt I may say, that we are now in a far worse condition than before the making of this Act; for Dispensations from Rome (as all other things there) were costly, came slowly, being far to fetch; that I presume there's ten Dispensations for Pluralities now for one then; & few of those dispensed with were non-residents upon both Livings, as now

they be; Two great Parishes in many places being left to the care of two boys that came but the other day from School, and perhaps fitter to be there still, whilst the Shepherd that takes the fleece, either feasts it out in his Lords family, or takes his ease upon a Prebend or Deanry.

*The ends of
this Law.*

*To do their
duties.*

*To avoid Dila-
pidations.*

*To maintain
hospitality.
Stat. 15 R. 2.
cap. 6. and
4 H. 4. cap. 12.*

This good Law principally aimed at three ends or effects:

1. That every Clergy-man might attend his duty in reading the publick prayers of the Church, administering the Sacraments, preaching, inspecting the behaviour of his flock, and performing all sacred and divine Offices, like a good and faithful Shepherd: and I do wonder with what Conscience any Clergy-man can expect his dues from his Parishioners, that does not perform his duty in the first place.

2. The second end of this good Law, is to avoid Dilapidations in the buildings belonging to their Livings: for you shall seldom see a Non-resident, but he is also a Dilapidator; and 'tis no wonder that he that neglects the Flock, lets the Sheep-fold go to ruine.

3. The third end of this good Law was to maintain hospitality: and I would wish every Clergy-man to remember, that the poor have a share in the Tithes with him.

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Pope Sylvester in the beginning of the fourth Century decreed, that the Revenues of the Church should be divided into four parts: *Quarum una cedat Pontifici ad sui sustentationem; altera Presbyteris & Diaconis, & omni Clero: Tertia Templorum & Ecclesiarum reparationi; Quarta pauperibus & infirmis, & peregrinis.* Can.4.

And by a Canon of our own made in the time of King Alfred it is decreed, That the Tithes should be delivered to the Priest, who should divide them into three parts: *Unam partem ad Ecclesie reparationem; alteram pauperibus erogandam; tertiam vero ministris Dei qui Ecclesiam ibi curant.* Can.24. Lamb.132.

And by a Provincial Canon of our own it is ordered, *Quod religiosi beneficia Ecclesiastica obtinentes, secundum hujusmodi beneficiorum facultates annis singulis pauperibus parochianis beneficiorum eorundem certam Eleemosynæ quantitatem, Ordinariorum ipsorum locorum moderandam arbitrio, per ipsos Episcopos distribuere compellantur, &c.* Cap. In decimis. By all which it appears, that originally the Poor had a share in the Tithes.

And to this end the Statute enjoyns the Clergy-man to be resident in and upon his Living, that is, his Parsonage or Vicarage House, if he have any, and not at any other House in the Parish; but Imprison- Co.5.21.b.

*Who may be
Non-residents.*

25 H.8. ca.16.

33 H.8.ca. 28.

21 H.8. ca.15.

33 H.8.c.28.

ment without fraud, or removing for health without fraud, or not having a House upon his glebe, excuses his residence for the time; for the words of the Statute are (*That he that wilfully absents himself,*) So if any Parson, Vicar, &c. shall be in the Kings service beyond Sea, or in any Pilgrimage, or shall without fraud abide in any University within this Realm to study, or is a Chaplain qualified within this Stat. to have Plurality of Benefices, or the Chaplains of any of the Judges of the Kings Bench, or Common Pleas, Chancellour or chief Baron of the Exchequer, of the Kings Attorney and Solicitor, and the Chaplains of the Chancellour of the Dutchy of Lancaster, of the Augmentations, First-fruits and Tenths, of the Master of the Wards, the Surveyor general, of the Treasurer of the Chamber, and Augmentations, and Groom of the Stole, whilst such Chaplains abide, and are attendant in the Households of their Masters; and the Master of the Rolls, the Dean of the Arches, and the Chancellor and Commissaries of Archbishops and Bishops, and the twelve Masters of the Chancery so long as they shall continue in their places; may be non-resident: but the Chaplains of the Chancellor of the Dutchy, Augmentations, First-fruits, Master of the Wards, Surveyor general, Treasurer of the Chamber and Augmentations, and Groom of the

*the Stole, are to be resident twice in a year 9 E.2. cap.8.
at least, eight days at each time: And the
King may give License to any of his own
Chaplains to be non-resident: And any 21 H.3. ca.13.
Ecclesiastical Person to attend any Suit in
the Chancery or Star-Chamber without
fraud, may be non-resident for so long time,
&c.*

But if a Chaplain be qualified in re- *Masters dit.*
spect of his Service to have a plurality, *&c.*
and his Lord or Master die, be attaint of *Co.4.119.2.
Co.6.21.*
Treason, Felony, or removed from his
place, it will not serve the Chaplains turn
to be resident upon one of his Livings
without the Kings special License with a
non obstante.

And here I must not omit an ancient *Register, Or.*
Prerogative of the Kings of Eng- *58.b.
F.N.B.44.g.*
land, practiced in the height of Popery,
that where any Clergy-men were em-
ployed in the Kings service he might
dispense with their non-residence; and
if the Spiritual Judges went about to
censure or punish them by Ecclesiastical
Censures for such non-residence, the
Kings of England have sent their Writs
Mandatory commanding them to sur-
cease.

But Bishops and Archbishops are not *Concil. gene.
Const. Can.8.
Concil. Sardi.
Can. 15. Con-
stitutio Othom.
Quid ad vene-
rabiles patres*
within this Law, but not exempt from
this duty; there being several Canons
that require it: and Bishops may be com-
pelled hereunto by Ecclesiastical censures

*Bishops residence requir-
ble.*

2 Inst. 625.

by their Superiors; and the King may compel them by seizing their temporalities: a notable president whereof we have in the time of H. 3. When Popery was at highest, and the King not lookt upon as head of the Church; yet that King sent his Writ Mandatory to the Bishop of Hereford to be attendant upon his Bishoprick, otherwise he would seize of all his Temporalities. Which Writ, as well for the rarity as also for the Religious grounds upon which it was granted, will not be ungrateful to the Reader to see, and for whose satisfaction I shall give it him as I find it recorded by Sr. Edward Coke, and with there were no cause to make use of it in these days:

Rex Episcopo H. salutem, Pastores gregibus præponuntur, ut diei, noctisque vigiliis exercendo, oves famelicas in fertilissimis pascuis introducant: Errantes vero per verbum salutis, & virgam correctionis in unius ovilis conservare studeant. indissolubilem unitatem: Sed sunt nonnulli qui hanc doctrinam damnabiliter contempnentes, & sua ab aliis pecora distinguere nescientes, lac & lanam tollunt, qualiter dominicus grex alatur non curantes, temporalia rapiunt; Et quis in parochia fame pereat, aut periclitetur in moribus non attendunt; qui non Pastores, sed Mercenarii potius dici promerentur: Hoc siquidem dum hiis diebus ad disponendum
de

de regni nostri presidii in partes Marchie nos transferremus in Ecclesia vestra, (dolenter referimus) nos invenisse, quam adeo invenimus pastoris solatio destitutam ut nedum Episcopum, sed nec officialem haberet, Vicarium aut Diaconum qui quicquam spiritualitatis exercere possit in eadem? Sed Ecclesia ipsa quæ olim deliciis affluere consuevit, & Canonicis qui ibidem nocturnis & diurnis officiis vacare, & opera charitatis exercere deberent, eam deserentibus & longè degentibus in remotis, stola Jocunditatis exuta cecidit in terram, viduitatis suæ detrimenta deplorans, nec est qui consoletur eam ex omnibus caris ejus: Sane dum hæc vidimus, & consideramus diligentèr, pietatis aculeus, viscera nostra commovit, & compassionis gladius intima cordis nostri acrius vulneravit, ut tantam Ecclesiæ matris nostræ injuriam ulterius dissimulare non possimus, nec pertransire incorrectam. Quapropter vobis mandamus firmiter injungentes, quatenus ad Ecclesiam vestram prædictam, occasionibus quibuscunque postpositis, cum ea qua poteritis celeritate vos transferri curetis, commissum vobis in eadem cura pastoralis officium personaliter Executur. &c. Alioqui scire vos volumus pro constanti, quod si isthuc fieri non curaveritis, bona temporalia, & omnia quæ ad baroniam ipsius Ecclesiæ pertinent, quæ donatione constat eidem fuisse collata, & quæ hætenus

hactenus colligi & salvo custodiri precipimus in commodum & utilitatem ipsius Ecclesia convertenda, cessante jam causa in manu nostra totaliter capiemus, nec alterius sustinebimus, quod temporalia metat, qui spiritualia ad quae ex officii sui debito tenetur, irreverenter subtrahere non formidat, aut quod emolumenta percipiat, qui incumbencia ejusdem onera subire recusat, &c. T. &c.

This Writ was sent by H. 3. to Peter de Egueblanke a Savoyard, then Bishop of Hereford, who, as the Histories of those times relate had never a good, many bad qualities, that constantly attend men that are negligent of their duties to God and Man in this kind, how little care soever he took of duty, you hear, *lac & lanam sustulit, temporalia rapuit*, by which means he was grown intolerably rich; and mark what came of his wealth, the Rebellious Barons seized on him in his Cathedral Church at Hereford, and took all his goods and Treasure and divided it amongst their Souldiers: Even so may it fare with all such Bishops.

Now my hand's in, I will beg the Readers patience to inform what Pope Damasus, one of the better sort of Popes said in an Epistle of his to such Bishops; and it was thus:

Primum quod curam sibi commissam negli-

negligant, cum Dominus dicat; Bonus pastor animam suam ponit pro ovibus suis, mercenarius autem videt lupum venientem, & demittit oves, & fugit, &c. Secundo illi Episcopi qui talia presumunt, videntur mihi (ait) esse meretricibus similes, quæ statim ut pariunt, infantes suos aliis nutricibus tradunt educandos, ut suam citius libidinem explere valeant. Sic & isti infantes suos, id est, populos sibi commissos aliis educandos tradunt, ut suas libidines expleant, id est, pro suo libitu secularibus Curis inbient, & quod unicuique visum fuerit, liberius agant, Pro talibus enim animæ negliguntur, oves percutunt, morbi crescunt, hæreses & schismata prodeunt, Ecclesiæ destruuntur, sacerdotes vitiantur, & reliqua mala proveniunt. Non taliter Dominus docuit, nec Apostoli instituerunt, sed ipsi qui Curam suscipiunt, ipsi peragant & ipsi proprios manipulos Domino representent. Nam ipse ovem perditam diligenter quæsit, ipse invenit, ipse propriis humeris reportavit, nosque id ipsum facere perdocuit. Si ipse pro ovibus tantam curam habuit, quid vos miseri dicaturi sumus, qui etiam pro ovibus nostris commissis Curam impendere negligimus, & aliis eas educandas tradidimus? Corrigan-
tur hæc (fratres) necesse est quia, qui plus laborat, majorem mercedem accipiet.

And now I have done with Non-
residence, one of the Pests of the Church;

I will in the next place shew what Dilapidations are; and the severall ways the same are punishable, this being often the effect and fruit of *Non-residence*.

C H A P. VIII.

Shews what Dilapidation is, and in what manner punishable, and what remedies the Successor hath.

*Dilapidations,
what?*

A Dilapidation is the pulling down or destroying in any manner any of the Houses or Buildings belonging to a Spiritual Living, or in the Chancel, or suffering them to run into ruine or decay; or wasting and destroying the Woods of the Church; or committing, or suffering any wilful waste in or upon the inheritance of the Church. And certainly there can be nothing worse becoming the dignity of a Clergy-man than Non-residence and Dilapidations, which for the most part go hand in hand. I wish our Church had not too much reason to complain of both. There have been divers Canons of the Church made against this crime, as I may justly call it; but as in others, so in this, I shall confine

fine my self to our own Provincials: and I find in a Provincial Council or Synod held under Edmund Archbishop of Canterbury, in the year of our Lord 1234. which was, as I take it, about the 18th year of H. 3. a Canon to this effect:

Si Rector alicujus Ecclesie decedens domos Ecclesie deliquerit dirutas, de bonis suis Ecclesiasticis tanta portio deducatur, quae sufficiat ad reparandum haec, & alios defectus Ecclesie supplendos. Item statuimus circa illos Vicarios, qui solvendo modicam pensionem omnes Ecclesie habent proventus: nam cum ad praemissa teneatur talis portio deducta, satis poterit & debet inter debita computari; Semper tamen rationabilis consideratio sit habenda ad facultates Ecclesie, cum haec portio fuerit habenda.

Canon against
Dilapidation.
Lindw. Chap.
Si Rector ali-
cujus Ecclesie.

Now if it be demanded what Houses are meant within this Canon, the Gloss tells you, *ut puta mansum Rectorie, vicarie & alia Edificia quaecunque, quorum Edificatio sive reparatio spectat ad ipsum Rectorem.*

By the Letter of this Canon the Rector is to repair the whole Church; but by the Custome of England the Owners of the Houses and Lands in every Parish are bound to repair the Body of the Church, and the Rector only the Chancel; unless by particular custom it hath been otherwise: And in this point the Common Law is kinder to the Parsons, Vicars, &c. than

Cc. 5. 6. 7.

Ero. Eliz.

659.

Not to repair
the Church but
Chancel.

2 Inst. 653.

*A Canon for
relief against
Dilapidations.*

*Verb. Ecclesi-
asticis.*

than the Canon-Law : and the Common Law being here to be preferred annuls that part of the Canon: and the Gloss upon the words *defectus Ecclesie*, adds, *Hec litera potest intelligi de defectibus Ecclesie, que pertinent ad curatum ipsius Ecclesie in solidum sic, quod non pertineant ad alios, ut puta, in Cancellaria, & aliis ad onus Rectoris de jure vel consuetudine spectantibus.*

But this Canon seems only to affect the Ecclesiastical goods: and what those might be deserves the judgment of the Gloss; which tells you they are such as *jure & nomine Ecclesie obvenientibus; talia enim bona sunt per viam tacite hypothecae ad reparationem hujusmodi faciendum obligata.*

And if the goods of the Church shall not suffice, then the Gloss tells us, *Si Rector bona Ecclesiastica expenderit in meliorationem patrimonii sui, vel si propter nimiam diligentiam propriorum negotiorum neglexerit negotia Ecclesie procurare, Et sic Ecclesia sit dampnum passa, tenetur satisfacere de bonis suis patronalibus, si que habuerit.* But there has been made a further question, whether satisfaction for dilapidations should be preferred in payment before Debts and Legacies: And as the Common Law prefers the payment of Debts before damage for Dilapidations; so the Ecclesiastical Law prefers the damage for Dilapidations before the payment of Legacies

gacies; to which hear what the Gloss says: *Si Legatarii tanquam Creditores petant legata sibi relicta, & Prelatus petat sumptus reparationis Edificiorum Ecclesie; talis Prelatus debet preferri ceteris Legatariis*: and gives this reason, *Nam Legata solvi non debent nisi prius deducto ere alieno*. So that the Ecclesiastical Law agrees with the Common Law in this, that debts are to be preferred before legacies.

The next thing considerable is, what repairs are requirable in this case, which is answered by the Gloss. *Et intellige Verbo reparandam hanc reparationem fieri debere secundum ratiōem exigentē & qualitatem rei reparandę, &c.*

Thus far I have followed the Canon and Gloss thereupon: Now in the next place we will shew you what we have relating to this matter amongst the Laws and Statutes of this Realm.

And first, I find that at a Parliament at *Carlisle* in the 35th year of *Edward* the First a great complaint was made against *Ambony*, then Bishop of *Durham*, for wast and destruction of the woods belonging to his Bishoprick by gift, sale, and otherwise, and for erecting forges of Iron and Lead, and making Charcoals of the wood to be spent in their Iron and Lead-works, to the disinherittance and impoverishing of his Church, and in prejudice of the King and his Crown, and of the Chapter of *Durham*. To which the
Waste by Bishop.
Co. II. 49. 2.
Cause of deprivation.

answer is, *Inhibetur per breve de Cancellaria Episcopo & ministris suis, ne faciant vastum de contentis in petitione.*

*M.23. Ei inter
adjudicat co-
ram Rege
Huntsf.83.*

By which it appears, that if a Bishop or any other Clergy-man do waste upon the Woods or Lands of his Church, that a prohibition may be sued in Chancery to prohibite him: for *Ecclesia est infra etatem & in custodia Domini Regis, qui tenetur jura & hereditates ejusdem manu tenere & defendere.*

*Rot.Pat. 14
H.3.m.8.
* Hollingsh.
181.b.30.
†20H.6.46.a.
2 H.4.3.b.
Co.11.94.b.
29 E.3.16.a.
9 E.4.34.a.
* Causa 10.*

*q.2. si quis,
casus Quæsti-
um fuit quam
penam d. beat
patri Episcopus
quum alienat
rem Ecclesiæ
nulla necessita-
te cogente:*

*The Answer
was, Res ipsas
Ecclesiæ pro-
prie restaurare
cogatur & in
Judicio Epis-
coporum desi-
ciatur auditus & convictus, & tanquam furti aut latrocinii re-*

And the Archbishop of Dublin was fined 300 Marks for the disafforesting a Forrest belonging to his Archbishoprick.

*And William, Abbot of Westminster, in the 15th year of King John, Anno 1213. was deprived because he had wasted the revenue of his Church or Abbey.

And it seems by several Books of the Common Law,*and by the Canons of the Church likewise, that in case a Bishop, Abbot, Prior, &c. waste the Lands, Woods or Houses of his Church, he may be deposed or deprived by his Superior: so that it appears clearly, that the fault in this case lies heavy upon those that have the Visitation and Superiority, that do not take care against the wasting and destruction of the Buildings, Houses, Woods, &c. of the Church; and that

us suo privetur honore. Causa 12.q.2.Apostolicos.

the

the Successors should not be put to seek remedy against Executors and Administrators, who are too active in finding shifts to avoid their actions, to avoid which there is a good Law made in the thirteenth year of Queen Elizabeth to this effect.

That if any Parson, Vicar, &c. shall make any conveyance of his goods to defraud his Successor of his remedy, the like Suit is given in the Spiritual Court against the Grantee, as the Successor should have had against the Executors or Administrators of the Predecessors. Statute against fraudulent Conveyancers. Star. 13 Eliz. cap. 2.

But this Act gives no remedy at Common Law, because by another Act made at the same Parliament all such Grants to defraud any Person or Persons of their just actions are made void. Stat. 13 Eliz. cap. 5.

So that the Plaintiff has equal remedy in both cases: Suits for Dilapidations are most properly and naturally to be sued in the Spiritual Courts; and if any prohibition should be granted, the same ought to be superseded by a consultation; but this is intended where the Suit is grounded upon the Canon-Law. Fitz. N.B. 51. f.

But the Successor may upon the Custom of England have a special Action upon the case against the Dilapidator, his Executors or Administrators, whereof there are multitudes of Presidents even in the time of Popery, whereof the Reader has

Action upon the Case at Law for Dilapidations. T. 8 H. 7. pro. 69. B. R.

T. 18 H. 7. ro.
69. C. B.
P. 12 and 13
H. 8. rot. 126.
C. B. H. 15 H.
8. ro. 306. C. B.
M. 12 H. 8. ro.
730. C. B.
H. 15 Jac. ro.
474. &c.
The Custom upon which the Action is grounded.

a taste in the margin : By all which it appears, that by the Custom of England, which is the Common Law; *omnes & singuli Præbendarii, Rectores, Vicarii Regni Angliæ pro tempore existentes, omnes & singulas domos & Edificia Præbendarum, Rectoriarum & Vicariarum suarum reparare & sustentare, & ea Successoribus suis reparata & sustentata dimittere teneantur. Et si hujusmodi Præbendarii, Rectores & Vicarii domus & Edificia hujusmodi Successoribus suis sic, ut præmittatur, reparata & sustentata non dimiserunt & deliquerunt; sed ea irreparata & dilapidata permiserunt, Executores sive Administratores bonorum & catallorum talium Præbendariorum, Rectorum & Vicariorum, post eorum mortem de bonis & catallis decedentium Successoribus talium Præbendariorum, Rectorum & Vicariorum, tantam pecunie summam quantam pro necessaria reparatione & edificatione hujusmodi domorum & Edificiorum expendi aut solvi sufficiet. satisfacere teneantur.*

And upon this Custom actions of the Case have been frequently brought, both anciently, and of later times, and damages recovered.

And note, that by a Statute made in the fourteenth year of Queen Elizabeth it is expressly enacted, *That all the Monies and Damages that shall be recovered for Dilapidations are to be expended and laid out,*

Stat. 14 Eliz.
cap. 11.

out, in, and about the repair of the Houses, &c. dilapidated, wherein the Visitors of those Churches ought to take care.

It will not be altogether improper to conclude this Chapter with the Stat. of 35 E. 1. 35 E. 1. intituled, *Nè Rectores prosternant arbores in Cæmeterio*; whereby it is enacted, or rather the Common Law declared to be in these words:

We do prohibit the Parsons of the Church, that they do not presume to fell them (viz. the trees in the Church-yard) down unadvisedly, but when the Chancel of the Church wants necessary Reparations: neither shall they be converted to any other use, unless the body of the Church do want repair; in which Case the Parsons of their Charity shall do well to relieve the Parishioners with bestowing upon them the same trees, which we will not command to be done, but we will commend it when it is done.

Against cutting the Trees in the Church-yard.

By this Law it appears, that the Church-yard and the soyl thereof is in the Parson, and by consequence the trees are in the Parson or Rector, that grow therein. But because the Trees that grow there are for the most part planted there for the shelter and ornament of the Church from Tempests and Storms; therefore the Parliament has granted a Prohibition in this Case against the Rectors and Parsons of Churches, that they should not cut down these trees for any other use,

but the necessary repairs of the Church and Chancel, which in truth was no more than what the Common Law enjoined : for if the Rector had gone about to have cut them down for any other use, the Patron might have had a Prohibition ; but now I conceive the Rector or Impropiator, that cuts down any Trees growing in the Church-yard for any other cause than for the repair of the Church or Chancel, may be indicted and fined upon this Statute at the Common Law.

Cap. Archidiaconi & infra.

If the Bishops and Archdeacons in their Visitations would take care, these Dilapidations might easily be avoided, which are a great dishonour to the Clergy, and cannot be pleasing to God Almighty or good men: And the Canon enjoyns the Archdeacons and other Officials, *ut in visitationibus Ecclesiarum faciendis diligentem exhibeant considerationem ad fabricam Ecclesie & maxime cancelli, si forte indigeant reparatione, & si quos invenerint defectus hujusmodi, certum sub pena prefigant terminum infra quem emendentur vel suppleantur, &c.*

C H A P. IX.

The ninth Chapter shews for what Causes a Parson, Vicar, &c. may be deprived by any Statute-Law; and what matters are allowed for good causes of Deprivation at the Common Law.

Deprivation or Deposition is, where a man by any Statute-Law, or by any judicial Sentence Ecclesiastical, that hath proper Jurisdiction, is made incapable to hold or enjoy his Parsonage, Vicarage, or other spiritual promotion or dignity: and the causes of such Deprivation or Deposition are properly and naturally determinable by the Ecclesiastical Laws of this Realm. But, because generally there are Estates of Freehold dependant upon these promotions and dignities, and annexed to them inseparably, which rest at the sole determination of the Common Law; the Courts of Common Law do sometimes inspect and regulate the proceedings of the Ecclesiastical Courts; and where they proceed against the Rules of Common Law, they frequently prohibit them: I have therefore thought fit to shew what causes of Deprivation or Depo-

Deprivation and Deposition quid.

Where determinable.

sition have been allowed and approved of by the Judges and Courts of the Common Law, or by any of the Statutes of this Realm. But there are many more causes of Deprivation by the Canons and Laws Ecclesiastical, which being out of my profession I shall not presume to discourse of.

Can. Apost.
42. Morrimer
vers. Parker.
10 Jac.

*Simony cause
of D p ivati-
on.*

1 El. cap.2.
Stat. 14 Car.
2. cap.4.
*To use other
Forms of Pray-
er, the third
offence.*

Stat. 14 Car.
2. cap. 4.

1. If a Parson, Vicar, &c. be a common Drunkard, it is a just cause to deprive him of his Church preferment.

2. The Clerk that obtains any preferment in the Church by any Simoniackal Contract or Agreement may be deprived by his Ordinary, &c. as appears at large in the fifth Chapter here before upon that Subject.

3. *That if any Parson, &c. shall refuse to use the book of Common Prayer or administer the Sacraments in the order there prescribed, or shall wilfully and obstinately standing in the same use any other Rite or Ceremony, Order, Form or manner of celebrating the Lord's Supper, or other open Prayers, or shall preach, declare or speak any thing in derogation thereof or depraving the same, or any thing therein contained, and having formerly been convicted for the like offence, shall upon his second Conviction be deprived ipso facto.*

4. If any Parson, Vicar, &c. shall not within two months next after Induction upon some Lord's-day openly, publicly and solemnly

solemnly read the Morning and Evening Prayers, appointed to be read the same day according to the Book of Common Prayer, and after such reading shall not openly and publickly before the Congregation there assembled declare his unfeigned assent and consent to the use of all the things therein contained in such manner as is directed before here in the seventh Chapter; and if there be any lawful Impediment, then if he do not do the same within one Month after the impediment removed; such Parson, Vicar, &c. shall be deprived ipso facto.

Neglecting to read Prayers within two months after Induction.

5. If any person, which shall have any Ecclesiastical preferment, shall advisedly maintain or affirm directly any Doctrine contrary or repugnant to the 39 Articles of Religion, and being convented before the Bishop of the Diocess or Ordinary, or before the high Commissioners shall persist therein and not revoke his Error, or after such Revocation shall eftsoon affirm such untrue Doctrine, he may be deprived.

13 El. cap. 12.
To maintain any doctrine against the 39. Art. of Religion.

5 R. 2. tit. Trial 54.
Miscreants, Infidels, Schismatics and Hereticks Depriv. f. 3.

6. If any person shall obtain a preferment in the Church, which is a * Miscreant†, Infidel, Schismatick or Heretick, he may be deprived.

* A Misbeliever.
† An Atheist, &c.

38 E. 3. 2. b.
Dyer 8 and p 254.

7. So if one be made a Parson, Vicar, &c. that is not of free Condition, but a Villain, or that is illiterate and not able to perform his duty, or that is guilty of any heinous Crime, as Murther, Manslaughter, Perjury, Forgery, or that is mere

Co. 5. 58. a. v.
Dyer 293. p. 1 and 2.

Slave, Villain, illiterate and criminous person may be de-

Laicus, and not in holy Orders, he may be deprived.

* *And so is the 54 Can. of the Apostles Express.*

Allen vers.

Nash. P.13 Car. 1. B.R. *Disobedience to his Ordinary cause of Depriv.*

Cro. Jac. 37. *Non conformi- ty.*

Quod nota.

8. * A Parson, Vicar, &c. may be deprived for being disobedient and incorrigible to their Ordinary, &c.

9. And it was resolved by all the Judges of England 2 Jacob. That Non-conformity was a good Cause of Deprivation, and it was declared by them all, that in case any Canons were made by the Clergy for the good Government of the Church, and approved and confirmed by the King (as they ought) that the obstinate disobeying of them was a just cause of Deprivation.

11 H. 4 37. *Taking a second Benefice.*

10. If any Parson, Vicar, &c. have one Benefice with Cure of Souls, and take another incompatible without a faculty and Dispensation, it is a just cause of Deprivation.

Dyer 133. p. 1. *Priest to marry was cause of Deprivation.*

11. In the time of Popery it was cause of Deprivation for a Priest to marry, but not to have two or three Concubines, as they called them, but more of this hereafter.

Co. 11. 98. b. 2 H. 4. 3. 9 E. 4. 34. 20 H. 6. 36. 29 E. 3. 16. 17. q. 4. *Qui- cunque.*

12. Dilapidating the Church and buildings, destroying the Woods, or alienating the Lands belonging to the Church by any Bishop, Abbot, Prior, Parson, Vicar, &c. have been held and adjudged just causes

causes of Deprivation; and it were very fit the Canons in this case were put in execution.

There may be a question started, what shall be intended by the words, deprived *ipso facto*; whether by those words the Church immediately shall become void by the fact done, or not till Conviction or Sentence declaratory. The words *ipso facto* are of late time crept into Acts of Parliament, as that for striking with a weapon in a Church-yard, the party shall *ipso facto* be excommunicate: and in that Case it is made a *quere* in *Dyer*. But in *Green's Case* it is resolved, that the Church in this case shall be void without any Sentence declaratory, and that Avoidances by Act of Parliament need no Sentence declaratory. But in that Case by the Canonists *requiritur Sententia declaratoria*.

Deprivation ipso facto.

Dyer 275.b. p.48.

Quere. Co.6. 29.b. Cap. Quia in continentie verb. ipso facto.

I must confess, in this Chapter I may seem to transgress upon the Canonists and Civilians as well as in some other, but I have gone no further upon this Subject than what I have met with* in our own Books, and I must agree, that the Ecclesiastical Courts have the sole Jurisdiction in all causes of Deprivation, Depositions, Resignations, &c. And yet the Judges of the Common Law have power to correct their proceedings, if they shall proceed against the Rules of the Com-

Common Law, which is the reason we meet with these things in our Books, and it may be some advantage to the *Civilians* to know, how far the Common Law approves of their proceedings: and having said what I have to say upon this Subject, I shall proceed next to shew, what Leases Parsons, Vicars, and other Ecclesiasticks may make at this day of the Glebes, Tithes, Farms, &c. and within the danger of what Statutes they may fall.

C H A P.

C H A P. X.

The Tenth Chapter shews, what Leases Parsons, Vicars and other Ecclesiastical Persons may make of their Glebe, Tithes, Farms, &c. and what Farms they may take, and within the danger of what Statutes they may fall.

HAVING undertaken this Work chiefly *What Leases*
 in favour of the Parsons and Vi- *Clergy-men*
 cars, I designed to have meddled with no *may make.*
 other Orders of the Church but those
 only; but having in many other things
 been enforced to intermingle the con-
 cerns of other Orders with those of the
 Parsons and Vicars, I shall beg the Read-
 ers pardon, that in this Chapter, where I
 am to treat of the Leases which may be
 made by Parsons and Vicars, I likewise
 take in all other Orders of the Church
 with the Colledges; the Learning con-
 cerning Leases being of use and necessary
 for all people to know, and which I shall
 in this Chapter put into as good a meth-
 od as the subject matter will permit.

And because the Learning of these
 Leases will depend upon several Statutes,
 it will not be amiss first to examine what
 Leases

Leases or Alienations the several persons we have to do with in this Chapter might have made at Common Law before the Statutes, and then to consider where, or in what manner, the several Statutes have enlarged, abridged or restrained their power at Common Law.

*At Common
Law.
1 Inst. 45. a.:*

And first, at the Common Law no Bishop, Abbot, Prior, Dean, Prebend, or other single Corporation, could make any Alienation or Lease to bind their Successors without the confirmation of their Chapter, Covent, &c.

*The enabling
Act of 32 H.
8. c. 28.*

The first Statute that made any alteration in these cases was the Stat. of 32 H. 8. which is commonly called the enabling Statute, whereby it is enacted,

That all Leases then after to be made of any Mannors, Lands, Tenements or Hereditaments, by writing under hand and Seal for term of years, or for term of life, by any Person or Persons of the full age of 21 years, having any estate of Inheritance either in Fee-simple, or Fee-tail, in their own rights, or in the right of their Churches, &c. shall be good and effectual in the Law against the Lessors, their Wives, Heirs and Successors.

Provided that that Act shall not extend to any Lease of any Mannors, &c. Where any old Lease should be in being, unless the same expire, be surrendered or ended within one year after the making of such new Lease,

nor

nor shall extend to any Grant to be made of any Reversion of any Mannors, &c. nor to any Lease of any Mannors, &c. which have not most commonly been letten to Farm or occupied by the Farmers thereof by the space of twenty years next before such Lease thereof made, nor to any Lease to be made without impeachment of waste, or to any Lease to be made above the number of three Lives or 21 years at the most from the day of the making thereof, and that upon the making of every such Lease there be reserved yearly during the said Lease due and payable to the said Leasors, their Heirs and Successors, to whom the reversion shall appertain, &c. so much yearly Farm or Rent, or more, as hath most accustomably been yielded and paid for the said Mannors, &c. so to be letten within twenty years next before the Lease thereof made, &c.

Provided this Act should not extend to give any liberty or power to any Parson, Vicar, &c. to make any Lease or Grant of any of their Messuages, Lands, Tithes, &c. or in any other manner than they should or might have done before the making of the said Act.

So now, where before the making of this Act no Archbishop, Bishop, Archdeacon, Dean or Prebend could have made any Lease to have bound his Successors without the confirmation and consent of their Chapters, &c. as aforesaid :

Now

*What qualities
such Leases
must have.*

Now by this Act they are enabled to make Leases for three Lives or one and twenty years without any confirmation at all with these qualifications:

*Must be in
writing inden-
ted.*

1. Such Lease must be made by writing Indented, and not by parol or deed poll.

*Must begin
from the ma-
king or day of
making.*

2. It must be made to begin from the making or day of the making of such Lease.

*Old Lease must
expire within
a year.*

Co. 5. 2. b.

3. If there be any old Lease in being at the time of the making of such Lease, it must expire, be surrendred or ended within a year after the making of such new Lease, and such surrender must be absolute and not upon condition.

*Must not be a
double Lease.*

4. Fourthly, there must not be a double Lease in being at one and the same time, the one for years, and the other for Lives.

*Of what things
such Lease may
be.*

Co. 5. 3. a.
More 778.
Talentine
vers. Denton.
H. 2 Jac. B. R.

5. Such Lease must be of Lands manurable or corporeal, which are necessary to be letten, and out of which a Rent may be reserved, and not of things that lie meerly in Grant; as Fairs, Markets, Tithes, Tolls, Franchises, Advowsons, &c.

*Of Lands usua-
lly letten.*

6. Such Lease must be of Lands, &c. which have most commonly been letten to Farm, or occupied by the Farmers thereof for the more part of twenty years before the making of such Lease: So if they have been so let for eleven years

years within the twenty years next before the making of the new Lease, it suffices: and a letting to Farm by Copy of Court-Roll is a sufficient letting to Farm within this Statute to enable the making of such new Lease. *Co. 6. 37. b.:*

7. There must be reserved upon every such Lease, and payable during the continuance thereof to the Leasor, his Successors, &c. so much Farm or Rent as hath most accustomedly been yielded and paid for the Land so demised within 20 years next before such Lease made: so that it sufficeth, if the yearly Rent or Farm be reserved, though Herriots and other casual services be omitted; so if a greater Rent than formerly be reserved, it sufficeth. But if Lands usually letten be demised with any other Lands, &c. though a Rent be reserved that exceeds the value of those Lands and the old Rent; yet such Lease is not good against the Successor within this Law. But if the Rent were formerly reserved to be paid at four several days, and by the new Lease be reserved to be paid all at one, so the whole Rent be reserved yearly, it is well enough. *The accustomed Rent must be reserved. Co. 6. 37. b.:*

Ibid.

Co. 5. 5. b.:

Co. 5. 37. b.:

If a Bishop, &c. have two distinct Mannors that have anciently been demised together, and one entire Rent reserved for both Mannors, and these being out of Lease, the Bishop, &c. may demise them *Trin. 26 Car. 2. C. B. Thredneedle vers. Linam.*

H. 27 Car. 2.
in B. R.

them severally, reserving several Rents amounting to the whole ratably; and these have been adjudged lately in the Common Pleas to be good, and affirmed in Error in the Kings Bench, and by the same reason, if a Termor for life should Lease part for years, and then surrender and accept a new Lease, tending the Ancient Rent, it would be a good Lease, *tamen inde quere*, for of that part leased by the Termor, there would be two Leases on foot together; but if the new Lease were only of the Lands not demised by the Termor, then it seems good.

*Such Lease
must not be
without Im-
peachment of
Waste.*

8. Lastly, such Lease must not be without impeachment of waste, and therefore a Lease to one for life, remainder to another for life, remainder to a third for life is not good against the Successor, though but for three Lives, because the remainders make the present Tenants punishable for waste for the time.

*Parsons and
Vicars ex-
cepted.*

But Parsons and Vicars being excepted in this enabling Law are left as they were at the Common Law; so that they could make no Lease to bind the Successor without the confirmation of the Bishop and Patron, till the *Stat. of 13 Eliz.* which we shall speak of hereafter.

*Co. 8. 70. b.
Lease for years
determinable
upon Lives.*

And note, that it hath been held, that a Lease for ninety nine years, if one, two or three Lives so long live, hath been good within this Statute.

Bu

But this Act, as appears by what hath been said, conferred a new power upon single Corporations; but did not in any thing restrain their ancient power in making long Leases and Alienations of their very Scites, Demesns, &c. with confirmations as aforesaid, which was a great prejudice to the Church in general, a means of Dilapidations, and a great hindrance of hospitality: and therefore,

In the first year of Queen Eliz. it was enacted, That all Gifts, Grants, Feoffments, Fines, and other Conveyances and Estates, from the first day of that present Parliament to be had, made, done or suffered by any Archbishop or Bishop of any Honours, Castles, Mannors, Lands, Tenements or other Hereditaments, being part of the possessions of his Archbishoprick or Bishoprick, or united, appertaining or belonging to any the same Archbishopricks or Bishopricks, to any Person or Persons, bodies politick or incorporate (other than the Queens Majesty, her Heirs and Successors) whereby any Estate or Estates should or might pass from the said Archbishops or Bishops or any of them, other than for the term of 21 years or three Lives from any such time as any such Lease, Grant or Assurance shall begin, and whereupon the old accustomed yearly Rent or more shall be reserved and payable yearly during the said term of twenty one years or three Lives, shall be utterly void and of no effect

1 Eliz. c. 19.
More 1. 7.
Bishops restrained.

effect to all intents, constructions and purposes, any Law, customs or usage to the contrary thereof in any wise notwithstanding.

1 Jacobi c.3.

Note, the exception, which gives or rather reserves the power to grant, &c. to the Queen, &c. was made void by a Statute made 1 Jac.

*Leases in other
Forms not void
but voidable.*

Smallwood
and Sale vers.
le Evesq;
Lich. & alios,
P.31.El.ro.21.
65. Co.3.59.

And note also, that though this Statute enacts, that all Leases made in any other form shall be void and of none effect to all intents and purposes; yet it has been adjudged, that it is only to be intended as against the Successors, and that Leases made in other forms shall be good notwithstanding against the party himself that makes them, and may be affirmed by the Successor by the receipt of the Rent reserved thereupon.

1 Eliz. *Apri-
vate Act.*

Co.4.76.

Co.5.2.b.

Cro.El.874.

And note, this is a private Act of Parliament, that must in all cases be pleaded, and cannot be given in evidence.

And note also, that though this Statute do not restrain demising of any Lands not formerly demised, yet it does it by implication; for the accustomable Rent must be reserv'd, and unless accustomable let, there cannot be an accustomable Rent; and Leases within this Statute must have all the restrictions in that of 32 H. 8. before-mentioned.

And

And it must be of things manurable, as hath been said, out of which a Rent may be reserved: but some are of opinion that Tithes or things not manurable may be demised for twenty one years, because an Action of debt will lie upon the Contract: and so it was adjudged, as a learned Serjeant at Law inform'd me, in the case of the Precentor of *Pauls* about 17 *Jac.* and that the Successor shall have an Action of debt upon this Contract, and is good within the *Stat.* of 32 *H.8. cap.28.* and I have seen a Report of a Case in the 20 *Jac.* in the Common Pleas, that it was so adjudged; and see *Leyes Rep. 76.* That *Yelverton, Williams* and *Tanfield* were of the same opinion that it was good for years.

Upon this Statute and the former it hath been held, that Archbishops and Bishops may with confirmation of the Dean and Chapter make concurrent Leases, that is, notwithstanding there be a Lease in being for twenty one years, they may make a new Lease of the same lands to another for twenty one years from the making thereof; and this being confirmed as aforesaid shall bind the Successor, the other things being observed in it.

And Sir *Edward Cook* is of opinion, that like concurrent Leases may be made by Deans, Prebends, &c. with confirma-

*Of what things
such Leases
may be made.
Co.5 3.a.*

*More 778.
Sir Timothy
Tourneur,
Serjeant le
Roy.*

*1 Inst.45.a.
Concurrent
Leases.*

1 Inst.45.a.

tion: but some learned men are not satisfied concerning concurrent Leases, because by these concurrent Leases the Successor loses his remedy for his Rent by distress during the former term, and the Tenant may be insolvent as to an Action of debt.

13 El. cap 10.
The Restrictive Law against Leases of Deans, Priests, &c.

The next restrictive Law is that of 13 Eliz. whereby it is enacted, *That from thenceforth all Leases, Gifts, Grants, Feoffments, Conveyances or Estates to be made, had, done or suffered by the Masters and Fellows of any Colledge, Dean and Chapter of any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar, or any other having a Spiritual or Ecclesiastical Living, or any Houses, Lands, Tithes, Tenements or other Hereditaments, being any part of the possessions of any such Colledge, &c. or any wife appertaining or belonging to the same or any of them, to any person or persons bodies, &c. (other than for the term of twenty one years or three Lives, from the time as any such Lease or Grant shall be made or granted, whereupon the accustomed yearly Rent or more shall be reserved and payable during the said term) shall be utterly void, &c.*

Co. 5. 14. b.

The penning of this Act, and that of 1 Eliz. before-mentioned being in effect the same in substance, the construction is the same in effect; but in this Act there was no saving of Grants to the King, and there-

therefore th is Act being for the publick good had restrained other Grants to him not warranted by this Stat. though 1 Jac. cap. 3. had never been made.

And here note, that as the Parsons and Vicars had not their power any wise enlarged by the Stat. of 32 H. 8. So they had no restriction upon them till this act; but from henceforth they are restrained from making any Lease or Grants other than for twenty one years or three Lives with the qualifications above-mentioned in the Statutes, and such Leases must be confirmed by the Patron and Ordinary, because excepted in the enabling Statute of 32 H. 8. before.

Parsons and Vicars restrained by this Law.

And whereas after the making of this Statute, Heads of Colledges, Deans, Prebends, &c. might have made concurrent Leases, as well as Bishops might; there is a Proviso in the Statute of 18 Eliz.

That all Leases then after to be made by any the aforesaid Ecclesiastical, Spiritual or Collegiate Persons, or others of any of their Ecclesiastical, &c. Lands, &c. whereof any former Lease for years is in being, and not expired, surrendered or ended within three years next after the making of any such new Lease, should be utterly void frustrate and of no effect, any Law, &c.

18 Eliz. c. 11. No concurrent Lease, but within three years before the former end.

By this Proviso, it should seem, the Parliament was of opinion, that concurrent Leases might be made, but has by this Pro-

viso so restrained them, that they cannot be made but within three years before the Determination of the former.

Bishops not in this Act.

But Bishops are conceived not to be comprehended within this *Proviso*, for though the words are general enough, yet the particulars mentioned before the general words being of an inferiour rank, the general words cannot draw in the more worthy.

Which Bonds and Covenants shall be void.

And there is a Provision in this Act of 18 Eliz. That all Bonds and Covenants then after made for the making or renewing of any Lease contrary to the intent of that Statute, or of the Statute of 13 Eliz. c. 10. should be utterly void.

13 Eliz. c. 20. Leases of Parsons to be void by Non-residence.

In the 13th year of Queen Elizabeth there is an Act of Parliament made, whereby it is enacted, That no Lease made after the 15th day of May following of any Benefice or Ecclesiastical Promotion with Cure, or any part thereof, and not being impropriated, should endure any longer, than while the Leasor should be ordinarily resident and serving the Cure of such Benefice without absence above fourscore days in any one year; but that every such Lease [so soon as it or any part thereof should come to any possession above forbidden or] immediately upon such absence shall cease and be void, and the Incumbent so offending shall, &c. lose one years profit of his said Benefice to be distributed by the

These words within the [] are repealed by 14 El. c. 11.

the Ordinary to the Poor of the Parish.

And by the same Statute it is further *charging Par-*
 enacted, That all charging of such Bene- *sonages void.*
 fices with Cure then after with any pen-
 sion, or with any profit out of the same to be
 yielded or taken, other than Rents reserved
 upon Leases, should be void.

But where any Parson should be qualified *Where a Par-*
 to have two Livings, he may demise the one *son may demise*
 of them, where he is not ordinarily resident, *and be non-*
 to his Curate only, that shall there serve the *resident.*
 Cure. And such Lease shall endure no
 longer than during such Curates residence
 without absence above forty days in any one
 year.

And by 14 of Eliz. it is enacted, That *14 El. cap. 11.*
 all Leases, Bonds, Promises and Covenants *Leases, Bonds,*
 of and concerning Benefices and Ecclesi- *and Covenants*
 astical Livings with cure to be made by any *to be void.*
 Curate shall be of no other or better force,
 validity or continuance, than if the same
 had been made by the beneficed person
 himself, that shall demise the same to such
 Curate.

And by the same Statute it is enacted, *Houses Incor-*
 That the restrictive Statute of 13 El. c. 10. *porations, &c.*
 before, shall not extend to any Grant, As- *how to be lea-*
 surance or Lease of any houses belonging to *sed.*
 any the persons, &c. (in the said Stat. of
 13.) nor to any grounds to any such houses
 appertaining, &c. in any City, Burrough,
 Town Corporate or Market Town, or the
 Suburbs of any of them; but that all such

houses and grounds may be granted, demised and assured, as they might have been before the making of the said Act. so always as such house be not the Capital, or dwelling house used for the Habitation of the Parsons, &c. nor have above ten Acres to the same.

Not to lease in
reversion.

Provided, That no Lease be made by vertue of this Act in reversion, nor without reserving the accustomed yearly Rent at least, nor for a longer term than for forty years at most, charging the Lessee with repairs, and no alienation in Fee, unless Lands of as good yearly value be settled, &c. in lien thereof.

Bonds, Con-
tract, Cove-
nants, Promi-
ses, where to be
void.

There is likewise another Proviso in this act, that all Bonds, Contracts, Promises and Covenants to be made for the suffering or permitting any person to enjoy any Benefice or Ecclesiastical Promotion with Cure, or to take the profits or fruits thereof, other than such Bonds and Covenants as shall be made for assurance of any Lease heretofore made, shall be of no other force than Leases made by the same person.

18 Eliz.c.11.

And by another Statute made in the 18th year of the same Queen Eliz. It is enacted, That after complaint made to the Ordinary, and Sentence given upon any offence committed by the Incumbent against the Statute of 13 Eliz.cap. 20. whereby he shall or ought to lose a years profit of his Benefice, &c. That then the Ordinary with-
in

in two months after such Sentence and request made by the Churchwardens of the Parish, where, &c. or one of them shall grant the Sequestration of such profits to such Inhabitant or Inhabitants within the same Parish, &c. as to him shall seem meet, &c.

And that upon default of the Ordinary, *Every Parishioner may take* it shall be lawful for every Parishioner, &c. to retain, &c. his Tithes, and for the Churchwardens to enter upon the Glebeland Rents and Duties of every such Benefice to be employed to the use of the poor, &c. until such time as Sequestration shall be committed by the Ordinary; and then the Churchwardens and Parishioners to account to such to whom the Sequestration shall be committed, who is to employ the whole profits according to the act, upon pain to forfeit the double value of the profits withholden, to be recovered in the Ecclesiastical Court by the poor of the Parish.

Having thus for the Readers satisfaction given him an Abstract of all the Statutes concerning the Leases of Ecclesiasticks of all kinds, I shall briefly sum them all up, and proceed to take a view of such other Statutes as the Parsons, Vicars, &c. are in any manner in danger of.

Upon the whole matter it appears, *What Leases may be made by Bishops and Archbishops.* that Archbishops and Bishops may make Leases for twenty one years, or for one, two or three Lives, with the qualificati-

ONS

ons before-mentioned without any Confirmations at all: and they may make concurrent Leases for twenty one years upon Leases for twenty one years from the making with confirmation of the Dean and Chapter with such qualification as is aforesaid, though there be above three years in being of the old Lease at the time of the making the new, and where the Bishop has two Chapters, there the concurrent Lease must be confirmed by both Chapters; unless it be as it was in the Bishop of *Waterford's* Case, which was thus: The Bishop of *Waterford* had long ago the Bishoprick of *Lismore*, and the Chapter united to that of *Waterford*; And in all Grants made of the Lands belonging to *Lismore* that Chapter only confirmed, and all Grants made of the Lands anciently belonging to the Bishoprick of *Waterford* the Chapter of *Waterford* only confirmed: and because the Union was not extant, all the Judges held the confirmation of the one in the manner aforesaid was good, for it shall be intended, that it was so provided for upon the consolidation; but otherwise all the Judges held, that both Chapters ought to have confirmed.

But if a Bishop had two Chapters, and one of them surrender, is suspended or dissolved, the confirmation of the other suffices.

There

Co. 12. 71. a. b.

Dyer 282.
p. 26.
Ibid.

There is a Case in Mr. Justice *Harpur* M. 14 and 15 Reports, where the Case is put, That a Bishop made a Lease dated 2 *die Maii* confirmed the third day, and sealed the fourth day of *May*, and held a good Lease and well confirmed.

But a Confirmation by the Dean and Chapter after the death of the Bishop comes too late by *Catlyne, Southcoate* and *Windham* against *Wray*. *Harpur Rep. m. 14 and 15 El.*

But if a Bishop make several concurrent Leases, and the latter is first confirmed, and after the first is confirmed; in this Case the first Lease shall be preferred, because nothing passes by the Confirmation in point of Interest but a meer Consent. *T. 6. El. More 66.*

If a Bishop make a Grant to the King, which is confirmed by the Dean and Chapter before the Grant is inrolled, this is well enough. *T. 8. Jac. Scac. Sir Edw. Dimock's Case. Rolls 1. 477. h. 7.*

But note, that a Bishop cannot make a concurrent Lease for life, though upon a precedent Lease for years; nor a concurrent Lease for years, where there is a Lease for life in being. *Crok. El. 141. More 253.*

Deans, Prebendaries, Heads of Colledges, Masters of Hospitals, and other Ecclesiastical Persons mentioned in the Stat. of 13 *Eliz. c. 10.* may make Leases for 21 years, or any lesser number of years, or for one, two or three Lives in possession, according to the qualifications above-men- *Leases by Deans, Prebends, Colledges, &c.*

mentioned ; and they may make concurrent Leases as Bishops may with confirmations ; but they must be within three
 18 Eliz. c. 11. years of the determination of the former term by expiration, surrender or otherwise: so that in this point the Bishop has the advantage.

And though the enabling Stat. of 32 H. 8. gives power to make Leases to hold from the making, or day of the making ; yet the Restrictive Stat. of 13 El. makes them void , if they be not made to hold from the making, and not from the day of the making; *quod nota*: But the Leases of Bishops and Archbishops are not within that Act, but the Act of *primo* of the Queen; which is, that all Leases should be void, other than for 21 years or 3 Lives from the time of the commencement : Note the different pennings.

Concurrent Leases, and who is to confirm Leases.

Rolls 1. 481.

p. q. f.

Dyer 221. p.

18. 357. p. 42.

Plow. 528.

Dyer 61. p. 30.

Co. 5. 81. a.

Who are to confirm Leases.

And forasmuch as all concurrent Leases of any Bishop, Dean, Prebend and Arch-Deacon are to be confirmed , it is convenient to let the Reader know who is to confirm the same; therefore for the Readers satisfaction he is to know that the Leases of Bishops and Archbishops are to be confirmed by the Dean and Chapter, or Deans and Chapters, if there be several Chapters: Grants made by a Prebend are to be confirmed by the Bishop, Dean and Chapter: the Grants made by Deans are to be confirmed by the

the Bishop and Chapter: the Grants made by the Archdeacon, by the Bishop, Dean and Chapter: the Grants of Parsons and Vicars, with their Patrons and Ordinaries: and Grants by the Incumbent of a Donative, by the Patron alone.

But if a Parson make a Lease, which is confirmed by the Bishop only, who is Patron, without the Dean and Chapter, which ought to have joyned; it shall bind the Successor during the Lives of the Bishop and Incumbent, although the Bishop be translated.

But Grants by Parsons, Vicars, Prebends, &c. before induction or installation, &c. although confirmed, are not binding to the Successor.

But if the King be Patron of a Prebend, then the King and Dean and Chapter, and not the Bishop, ought to confirm the Grant.

A Lease made by a Prebendary Parson, Vicar, &c. may be confirmed for part of the term, if it be for years, that is, confirm the Land to the Lessee for so many years of the term; but if the Term be confirmed for part of the Term, it were absurd and repugnant, and should be good for the whole term: and as such Lease may be confirmed for part of the term, so it may be for part of the Land.

Co. 5. 81. a.
Dyer 52. a. b.
Cro. El. 472.

If

Rolls 1.476.
f.1,2.

Rolls 1.479.
n.1.

Rolls 1.480.
n.2,3.

Rolls 1. 48c.
n.4.

Cro.Car. 582.

Rolls 1.480.
n.5.

Cro.El. 430.

Co.5.15. a.

If a Parson, &c. make a Grant, which is confirmed by the Patron and Ordinary, and after be deprived; yet the Grant is good. A Husband seized in the right of his Wife of an Advowson, the Parson makes a Lease warranted by the Statutes before-mentioned, and the Bishop and Husband confirm it; this shall not bind the right of the Wife but during the Husbonds life, but that the Successor after his death will avoid it, that comes in by the presentation of the Wife. So if Tenant in tail being Patron confirm the Grant of the Parson with the Bishop, this shall not bind the Incumbent of the issue in tail.

If an Usurper present, and confirm the Lease of his Incumbent with the Bishop, and after is removed by *quare Impedit*, &c. this shall not bind the Clerk of the true Patron.

If the true Patron grant the next avoidance, and then confirm the Grant of the Parson, who after dies; the Incumbent presented by him that had the next avoidance shall avoid the Lease, and his very entry upon the Lessee avoids the Lease for ever.

If the Parson make a Lease to the Patron, which is confirmed by the Bishop, this is not good; but if the Patron grants it over, it amounts to a confirmation.

If

If a Prebend, Parson or Vicar make a Lease, and the Bishop being Patron confirms it without the Dean and Chapter; yet this shall bind the Bishop and all the Prebends, Parsons, &c. which he shall Collate.

Rolls 1.481.
P.1.

If a Parson had made a Lease for above 21 years before the Statutes of 13 and 14 Eliz. which had been confirmed after, this had been good, and not within the restriction of those Laws.

Cro.El.18.

If a Parson Leases where there are two Patrons, both ought to confirm as should seem.

1 Leon. 233.
Quere.

If the Patron and a succeeding Bishop confirm the Lease of the Parson, it is good enough.

Cro.Car.38.

A Prebend made a Lease, reciting that it was with the consent of the Bishop, who signed and sealed the Lease to the Lessee, but was no party to the Deed, *quere* if good.

Dyer 106.p.
21.
Quere.

And having said thus much of Confirmations, let us see, what Leases a Parson or Vicar may make at this day, considering all the before-mentioned Statutes.

And first, it is to be observed, that at and by the Common Law a Parson or Vicar might have granted or charged his Glebe in Fee-simple with the confirmation of the Patron and Bishop; but being excepted out of the enabling Statute of 32 H.8. he could never make any Lease

Leases by
Parsons and
Vicars.

32 H.8.c.28.

13 El.cap. 10. Lease or Grant to bind their Successors, without such confirmation; then by the Statute of 13 Eliz. *Parsons and Vicars are restrained: So that they cannot grant but for 21 years or three Lives from the making of such Lease, and not from the day of the making, as is before observed; and these Leases and Grants must be with the confirmation of the Patron and Ordinary, with all the qualifications expressed in the beginning of this Chapter.*

And it should seem, they may make concurrent Leases, as Deans, Prebends, &c. may do, within three years of the end of the former Leases.

13 El.cap. 20. It has been a question, whether a Parson or Vicar at this day can make any Lease at all to bind his Successor: for by the Statute of 13 Eliz. Chap. 20. it is enacted, *That Leases of Parsons, Vicars, &c. that have Cure of Souls shall endure no longer, than they shall be ordinarily resident and serve the Cure; and that if such Parson, &c. shall be absent from their Cure above 80 days in one year, that then such Lease shall cease and be void.* Now when a Parson dies, and 80 days incurr, and this being a Law for the advancement of Religion and Hospitality, to avoid Dilapidations, it shall have an equitable construction for the preferring of these ends; therefore some have held, that the death of the Parson, Vicar, &c. after 80 days have

have incurred from their deaths, shall make all their Leases and Grants void, though never so sufficiently confirmed; and rely very much upon the preamble of the Statute, which begins, *That the Livings appointed for Ecclesiastical Ministers* *Parson's Leases may not by corrupt and indirect dealings which is con-* *be transferred to others uses, Be it enacted, firmed, and* *dys.* &c. But by these Leases it is apparent the profits are converted to other uses, &c. But others have held the contrary Opinion, because such absence is not voluntary but by the Act of God, and regularly these cannot be said absent *Cro. El. 123.* that are not in *esse*: and though *Cro.* report *Mott* and *Hale's* Case adjudged in point that their Leases are void by death; Yet *More* reporting the same *More 270;* Case says, As to the matter in Law the Judges were divided two against two, and that the Judgment was given upon a misrecital of the Statute. And this point as I am informed, came lately in question *Bayley, vers. Munnes. T. 24. Car. 2. B. R.* in the King's Bench, and was adjudged that death doth not avoid such Leases. *Idco quere inde.*

There is a *quere* in *Dyer*, whether such Leases shall be void upon 80 days absence *ab initio*, or but from the time of absence by 80 days; but it seems to me with some clearness that it shall only be void from 80 days absence, and not *ab initio*; For first, the words of the Statute are,
K
that

Quere.
Dyer 372. p. 2.
When Parson's
Leases shall
be void by non-
residence.

that such Lease shall indure no longer than the Leasor shall be ordinarily resident, &c. So that till then it is to indure: and the Statute closes, that upon such absence the term shall cease, which it could not do, if it had not a being before; for a thing cannot cease to be, that has not been.

Quære.

*Whether void
against the
Parson him-
self.*

*Co. 3. 59. b.
60. a.*

*And there has
been some late
opinions as I
have heard a-
gainst the
resolution in
Lincolne Col-
lege.*

*Dyer 372. p.
11.*

Quære.

*Dobbins ver-
Gerrard p. 39.
El. B. R.*

But another *quære* may be started in this Case upon the reason in *Lincolne Colledge Case*, whether such Lease shall be void against the present Incumbent that made it, or only against his Successors; but it seems to me with some clearness that the intent of the makes of this Act is to make such Lease void against the Leasor himself upon such absence: for, as before is said, the Statute says, it shall indure no longer, which is a term of limitation, and that immediately upon such absence the Lease shall cease and be void; and it cannot cease immediately upon the absence, and yet be good during the life of the Incumbent. But in the Case of *Reuel vers. Hart*, H. 43. Eliz. B. R. the Court held the contrary, as my Reporter says. *Ideo quære.*

If any Parson Vicar, &c. be suspended; inhibited or disabled to serve the Cure by the space of 80 days in a Year, this shall not make such Lease void, for the not serving the Cure must be voluntary: And it has been held, that if a Parson be resident and do not serve the Cure, or serve the Cure

Cure and be absent by 80 days, that in both these Cases it will make such Lease void.

Though this Statute upon 80 days absence makes such Lease void made by Parsons and Vicars, and says nothing of confirmation; yet a confirmation of the Patron and Ordinary in this Case seems not to amend the matter, for if the Lease be void, the confirmation is of no avail.

At the Common Law, if a Parson Vicar, &c. had made a Lease and resigned, the next Incumbent might have entred immediately upon the Lessee; but by a Statute made in the 28th Year of H. 8. *the Lessee may hold on his term for six years, if the Parson that made his Lease so long live, and the term were made for so long time; but upon such Lease there must be so much Rent reserved within forty shillings as such Benefice is valued at in the King's Books.*

Stat. 28. H. 8.
cap. 13.
Parson leases
and resigns.

And by the same Statute, if a Parson make a Lease and resigns and dies, the Tenant shall hold out his Lease for the Year that was commenced at the time of his death, if the Term were to have had so long continuance, if the Parson had not died: but this seems only of such Lands as are plowed, for the succeeding Parson is to have the Parsonage, House and Glebe which is not sowed within a month after he is inducted,

ducted, allowing a reasonable deduction for the Rent reserved upon such Lease.

But in both Cases the Lessee must pay the reserved Rent to the succeeding Incumbent, who is enabled to sue or distrain for the same.

And such Lease must be in writing under hand and seal and not by parol.

13 El. cap. 20. But it should seem the Statute of 13 El. before has made this Law of no effect.

18 El. c. 11. And having now done with these Statutes, as to Leases, let us next consider what Bonds, Covenants, Promises, &c. are void within the Statute of 18 Eliz. before-mentioned.

Hob. 269.
Covenants,
Bonds, which
good.

Covenants, Bonds, &c. made for the enjoying houses within Cities, Corporations, &c. are not void within this Law; for this Law makes no Bonds, Covenants, &c. void, which are not against the intent of this Statute, and the Statute of 13 El. cap. 10. but Leases of Houses and Lands in Cities, &c. by the Stat. of 14 El. c. 11. are exempted out of 13 El. cap. 10. and are not within the Stat. of 18 El. before.

More 641.

A Parson made a Bond to resign upon request, and afterwards a Lease to his Patron of part of the Glebe for twenty one years: in an Action brought upon this bond, the Incumbent pleaded the Statute of 18 Eliz. and averred that this Bond was

was made to secure this Lease, and to compel the Incumbent to reside, and adjudged a good Plea, and an apt averment.

A Parson made a Lease, and in the Lease covenanted not to be absent by the space of 80 days in any one year, and gave Bond for the performance, and after became non-resident by 80 days, and resolved that the Bonds and Covenants were both void. Cro. El. 489.
Noy. 66.

A Parson made a Lease, and covenanted neither to do or suffer to be done any matter, whereby the Lease should become void, and after became non-resident by the space of 80 days in a year, and this was held a good Covenant, and a Covenant that the Parson should be resident was held not to be against this Law by *Popbam, Tanfield, and Clench* against *Williams*. *Ideo quere.* Olivers Case
M. 4. Jacob. B
R.

And having now done with Leases to be made by Ecclesiasticks of every kind, and having therein exceeded my bounds beyond Parsons and Vicars to all other Ecclesiasticks, since the Leases of Colleges and Hospitals come in my way, I will give the Reader what satisfaction I can concerning them: And as to them, Quere.
Leases of Coll.
Hospitals.

It is to be observed, that they are not comprehended in the enabling Statute of 32 H. 8. nor in any other Statute that I find till the restrictive Statute of 13 El. 13 El. cap. 10.

whereby amongst the rest, the Masters and Fellows of Colledges, and the Masters and Guardians of Hospitals are disabled to make any Grants or Conveyances of any of their possessions, other than for twenty one years, or three Lives from the making of such Lease, and not from the day of the date, or from the date, as has been said : and this must be of Lands usually demised, and the accustomed Rent, or more, must be reserved with all the other qualifications mentioned in the beginning of this Chapter.

Stat. 18. Eliz.
cap. 6.

But there is a restriction upon Colledges by the Statute of 18 *Eliz.* that upon all Colledge Leases a third part of the Antient Rent shall be reserved in Wheat and Mault, after the rate of 6 *s.* and 8 *d.* a Quarter Wheat, and 5 *s.* a Quarter Mault; to be delivered at the Colledges, and in default of the delivery to pay for the Wheat and Barley, after the rate the best Wheat and Mault shall be sold the next Market day before the Rent should have been paid, and for default of such reservation the Lease to be void, and the Markets are to set the prices are, *Oxford* for *Oxford*, *Cambridge* for *Cambridge*, *Windsor* for *Eaton*, *Winchester* for *Winchester*,

18 *El. c. 11.*

And by the Statute of 18 *Eliz.* they are restrained to make any concurrent Leases till within three years of the end of the former Terms that are in being. I

I shall now shew the Reader, what things are demisable within these several Statutes, and what Reservations are good, and in what cases the Acceptance of Rent by the Successor will make a Lease good, that was voidable within these Laws, and the several qualifications mentioned in the beginning of this Chapter.

What Leases shall be good.

One *Small* being possessed of the manor of *Paddington* by a Lease from a Bishop for a Term of years, the Bishop made a Lease to another for three Lives, and before Livery the Tenant surrendered his former Term, and it was held that the Surrender was made in due time, and the second Lease good.

Smalls Case.
M.4.Jac. B.R.
Former in being.

A Prebend had usually been leased (excepting the Crab-trees) and the Prebendary made a new Lease without excepting the Crab-trees, reserving the antient Rent, with other due Circumstances, and this Lease was held void against the Successor by reason of the adding of the Crab-trees.

Cro. Jac. 458.
3 Bulst. 290.
More in the new Leases than the old.

It hath been adjudged, That a Bishop, Dean, &c. cannot grant the next avoidance of an Advowson, nor any Rent-charge out of the possessions of the Church, but the same is void within the restrictive Acts before-mentioned, though these cannot be said any of the possessions of their Churches.

Co. 5.15. a.
Next avoidance not demisable.
Co. 10.60. b.

Davenant v.
Evesq. Salis-
bury. M.23.
Car. 2. B.R.

And it hath been held that where a Bishop demised a Rectory for lives, and covenanted to discharge, save harmless, and indemnified, the Lessee, &c. from all Pensions, Procurations, Subsidies, and from all other payments of any Sum of Mony Demands, and Duties whatsoever; ordinary or extraordinary, which shall be due and issuing out of the premisses, that this Covenant would not bind the Successor, unless it had been in the antient Leases: and the Lord Chief Justice Hale was of opinion, that such Covenant, though it had been in former Leases should not bind the Successor for the Royal Aid, or any new charge by Act of Parliament.

Co. 10. 61. b.

But a Bishop may grant an antient Office with the antient Fee (if it be a necessary Office for the life of the Officer.) But the Bishops cannot grant such Office to 2 or in reversion. And a Bishop cannot grant an annuity, *pro consilio impenso & impendendo*, to bind his Successor though it be confirmed by the Dean and Chapter.

Co. 10. 61. b. 2.

And it hath been resolved that a Bishop of late erection may grant an Office of necessity to one in possession for life with a reasonable Fee.

But these grants must all be confirmed by the Dean and Chapter, because they are not good within the Statute of 32 H. 8.

Co. 10. 62. a. 2.
Cro. Car. 555.

But where Offices have antiently been granted

granted in Reversion, they may still be granted in Reversion with confirmation.

If a Bishop grant an antient Office with the antient Fee and more, and the grant be intire, as where the antient Fee was 5 Marks, and the new 5 l. 'tis void for all. But if it be severall, as 5 Marks, and Pasturage for 2 Horses, it is good for the antient fee, and void for the other. *per Hutton and Telverton, vers. Crook and Harvey.*

Evesq; Chichest. vers. Freedland. Leyes Report. 72.

If a Copyhold Escheator be forfeited, the Bishop may grant it in Fee by Copy of Court-Roll, notwithstanding the Statute of 1 Eliz.

Col' yns and Jones Case. Ley. 80.

It was also resolved, that where an Arch-deacon made a Lease for three Lives warranted by the Statutes before mentioned, and the Lessee granted a Rent-charge for a hundred years, which was confirmed by the Bishop, Dean and Chapter, that notwithstanding the same was void against the Successor within the Stat. of 13 Eliz. cap. 10.

Co. 5. 15 a. Charges void.

If a Writ of Annuity should be brought against a Parson, &c. pretending the same due by Prescription, and although the Parson pray in aid of the Patron and Ordinary, and upon a Plea pleaded by them the Plaintiff obtains a Verdict and Judgment, and all this by practice and fraud to charge the Glebe, it is void against the Successor; for these Statutes being made for

Co. 5. 14. b.

19 Aff.p.9.

*Acceptance of
Rent, where it
shall bind.*

Co. 3.65.a..
37 H.6.3 & 4.
51 E.3.Fitz.
Abbot 9.
8H.5.19.

Dyer 239.p.
42 F.N.B.C.

for the benefit of the Church, advance of Religion and Hospitality, and to avoid Dilapidations, shall always have a favourable Construction.

It is regularly true, that where the Wife issues in tail, or Successor accepts the Rent after the death of the husband, Tenant in tail, or Predecessor upon a void Lease made by the Husband, Tenant in tail or Predecessor, that such Acceptance will not affirm the Lease: but this Rule must be understood of such a Lease as is void *ipso facto*, without entry or any other Ceremony; and therefore if a Parson, Vicar or Prebend, &c. make a Lease not warrantable by the Statutes for twenty one years, rendering of Rent, and dyes, here no Acceptance of Rent by the Successor, &c. will affirm this Lease, because the same was void without Entry or other Ceremony; but if a Parson, Vicar or Prebend make a Lease not warrantable within the before-mentioned Statutes for life or lives, reserving Rent, and dye, and the Successor before entry accept the Rent; this Lease shall bind him for the time, for this being an Estate of Freehold could not be void before entry.

But if a Bishop Abbot or Prior, which have the inheritance in Fee-simple in them, make a Lease for lives or years not warranted by the Statutes before-mentioned, not being absolute void by their deaths,

deaths, but only voidable by the entry of the Successor, if the Successor accept the Rent before Entry, be it for lives or years, he affirms the Lease for his life.

If a Bishop make a Lease not warranted by the Statutes rendring Rent, and die, and his Successor appoints his Bayliff to collect his Rents of that Mannor, who amongst the rest receives the Rent reserved upon this Demise, and accounts to the Bishop's Successor for it; this is a good Acceptance, and shall bind the Bishop for his time. Rolls 1. 476. d.

So if a Parson lease for life not warranted nor confirmed, reserving Rent, if his Successor receive Fealty of this Tenant upon this lease, he has thereby affirmed the lease for his time: the like it will be, if the Successor bring an Action of waste. 11 E. 3. F. Abbot 9.
Dyer 239. p. 42.
2 H. 4. 2. a.

But if a Bishop make a lease of Tithes or other things not manurable for life or lives, rendring Rent, and dies, and his Successor accepts this Rent, it will not affirm the lease. Cro. Jac. 173.

But whether such acceptance upon a lease for years of Tithes, &c. will bind the Successor, I must leave it a *Quære*, not finding that point any where resolved.

Quære.

I having now held the Reader long upon this subject, shall now leave them and proceed to examine, what Leases or Farms they may with safety take or not take.

By

Stat. 21 H. 8.
cap. 13.
Parsons, &c.
must not take
Farms.

By a Statute made in the twenty first year of King H. 8. It is amongst other things enacted, That no Spiritual Person shall in his own name, or in the name of any other, take to farm any Mannors, Lands, Tenements or Hereditaments, upon the penalty of ten pounds for every Month that he holds the same; nor by himself nor any other shall buy Cattle, Corn, Lead, Tynn, Hydes, Leather, Tallow, Fish, Wool, Wood, or any manner of Victuals or Merchandizes, upon pain to forfeit the treble value of things so bought.

Where he may.

But a Spiritual Person may buy such things for his own use, and if they do not fit him, he may sell the same again; and so where he hath not sufficient Glebe, he may take grounds for the maintainance of his Family.

Shall not farm
another's Par-
sonage, &c.

And it is further enacted by the same Statute, That no Spiritual Person beneficed with Cure of Souls shall farm the Parsonage or Vicarage of another to take any Rent or Profit out of such Farm, upon the penalty of forty shillings a week, and ten times the value of the Rent or Profit he shall take out of such Farm.

Must not keep
a Tan-house, or
Brew house.

And it is further enacted by the same Statute, That no spiritual Person shall have or keep by himself, or any other, any Tan-house, or Brew-house, other than for his own Family, upon pain to forfeit ten pounds per menssem.

All which Penalties are given to the King and Informer, to be recovered in any of his Majesties Courts of Record at Westminster by Action of debt, Bill, Plaint or Information, wherein no essoine, protection, or wager of Law is to be admitted, &c.

Penalties how to be recovered.

5 Eliz. cap. 5.

By the Stat. of 5 Eliz. there is authority given to the Bishop of the Diocess, Parson, Vicar or Curate of the Parish to license any sick person to eat flesh during his sickness, and if his Sickness continue above eight days after the granting of such license, than the same is to be registred in the Church-book, &c. and that license to endure during the sickness, and no longer.

Where he may license the eating of flesh.

And if any Parson, Vicar or Curate grant any License to any person or persons, other than such as evidently appears to have need thereof by reason of sickness, the Parson, Vicar or Curate that granted such license shall forfeit five Marks for every such License, and the License to be void.

Penalty if needles.

In the 25 year of H. 8. There was a Statute made against the excessive number of sheep, wherein there is a Proviso, that it might be lawful to all spiritual Persons, and every of them, to keep such and so many sheep upon their own Lands, and after such form and manner, and not otherwise, as they might have done before the making of the said Act.

Sheep.

Stat. 25. H. 8. cap. 13.

There

Incontinentiae.

There is several Acts of Parliament for punishing incontinent Priests, which though since the blessed Reformation (I do not mean the last pretended reformation, but that in the time of E. 6. and Queen Elizabeth) are become absolute and useles: yet since I have promised them all the Statutes they may fall in the danger of, these are not to be omitted; but before I come to those particular Laws, I will beg the Reader's pardon for giving him a short Historical account of the Restriction of the Marriage of Priests, which gave the occasion of these Laws.

De Clericis cap. 18, 19.

Bellarmino in his disputations endeavours to make the single life of Priests to be *Jure Divino*; but if not so, yet he goes about to prove that it has been enjoined by Canons as high as the Apostles time: and to that purpose vouches the Canons of the Apostles (which though they may be ancient, yet no rational Man that peruses them will believe they were made by the Apostles, or very near their time) in which I must confess I find a Canon that by implication forbids Priests to Marry, but not Married Men to be Priests; and 'tis to this effect, *Ex his qui calibes in clerum pervenerunt jubemus, ut Lectores tantum & cantores. (si velint) nuptias contrahant.* But if he had lookt a little back in those Canons he would have found another manner of Prohibition in these words;

Canon 23.

Canon 5.
Canons against
the Marriage
of Priests.

Episcopus

Episcopus aut Presbyter, aut Diaconus, uxorem suam prætexit Religionis non abjicit: si abjicit se gregator à Communionē, si perseverat deponitur. But however it cannot be denied, but there were Antient Canons against the Marriage of Priests, but those only forbid Priests to Marry, but did not restrain Married Men from being Priests; and so it continued for many hundred years after Christs time, and for some time they might have Married * with the Licence of the Bishop; * Concil. An- but never received or put in practice in cyvan. can. 10. *England*, though practised in *Italy*, *France*, &c. but the Priests here Married, till *Anselme* Arch-Bishop of *Canterbury* a *Burgundian*, a powerful and busie Prælate in a Synod or National Council held at *Westminster*, made a *Hollingshead* severe Canon against it; but he meeting 30. b. 10. with an obstinate Clergy, that were unwilling to change their Wives for Concubines (to speak in the softest word) were not obedient: whereupon (as my Author tells me) he called a second Council in the ninth year of that King, where he made more severe Canons a *Hollingshead* gainst the Married Clergy in the presence 34. b. 10. of the King and Nobility, to give them greater Authority, which he prosecuted with great zeal, but did not live to effect what he desired. I do not find that his Successor *Rodolphus* troubled himself much in

in this concern of the eight years that he Governed the Church of *Canterbury*: but his Successor *William Corbet* followed the steps of *Anselm*, who for this and his other good works was Canonized a Saint at *Rome*: and in the Year 1126. called a Council or Convocation at *Westminster* against the Married Priests, wherein one *John de Crema* or *Cremensis* the Pope's Legate sent to manage this business, being a learned Man, made an Eloquent Oration in commendation of Chastity and a single life, and inveighed violently against the Married Clergy; and as divers Authors of good credit affirm, the great Orator was the same night taken in bed with a Woman, which made him to return with shame enough, howsoever, as Bishop *Goodwyn* tells us, that in that Convocation the Canons were renewed against the Married Clergy; but the Arch-bishop finding himself too weak to deal with so stubborn a Clergy, commended the care of this business to the King, who taking advantage of the Canons, squeezed some Money out of the Married Clergy by way of Commutation. I find no more of this matter, till after the death both of this Arch-Bishop and *H. I.* But I find there was a Convocation held at *London Decemb. 13. & 138.* by the Command of *Albert* Cardinal Bishop of *Hoftia*, where this matter was again violently

Hoveden in
H. 5. 274.
Speed 461. a.
Grc.
Bish. *Goodwyns*
Catalo. of
Bish. 83.
Mat. Paris. 70.
agrees with
Hoveden and
says, quod ipse
cum die illa
Corpus Christi
consecrasset
post vesperam
fuit in mer-
etricio inter-
ceptus: res ip-
sa notissima
negari non po-
test, dum mag-
num decus in
Summum dede-
cus commutavit
Goodwyn 84.
Fullers Eccl.
Hist. 27.

violently prosecuted: and I find no more after of it till in a Convocation or Council held under *Rich. Wethershead* Arch-Bishop of *Canterbury* 1229. in which it is decreed, *Qui autem in Sub diaconatu vel supra ad matrimonium convolaverint, mulieres renitentes & invitas relinquant.* But it should seem, notwithstanding all this persecution, that for some Years after some Married Men held their Livings: for in a Synod or Council held by *Otho* the Pope's Legate at *Saint Paul's* in *London* in the Year 1237. there is a Canon to this effect, *Innotuit nobis, pluribus referentibus fide dignis, quod multi proprie salutis immemores, Matrimonii contractu, claudesine retinere cum uxoribus Ecclesias, & Ecclesiastica Beneficia adipisci de novo, & promoveri ad sacros ordines contra statuta sacrorum Canonum, non formidant, &c.* and then proceeds, *Quod si repertum fuerit aliquot taliter contraxisse, ab Ecclesiis & Ecclesiasticis Beneficiis (quibus tam eos quam quilibet alias uxoratos fore decernimus ipso jure privatos) removeantur omnino, &c.*

Lindw. Si qui Clerici

Cap. de uxoris a beneficiis amovendis.

This nail being thus at length driven to the head, the secular Clergy lay about 300 years under this Bondage, and though if they would be at the cost they might have dispensations to keep Concubines, yet for the credit of his holiness there was great care taken they should not do it publicly, or scandalously: to which purpose

L

there

Cap. de Concu-
binis Clerico-
rum removen-
di

* Nota.

Canons against
Concubines.

there is a Canon in the same Council I last mentioned to this effect, *Statuimus, & statuendo precipimus, ut ubi Clerici, & maxime in sacris ordinibus constituti, qui in domibus suis & alienis detinent publice Concubinas, eas à se prorsus removeant infra mensem, & illas vel alias de cetero nullatenus detenturi, &c.*

Cap. Clericali
Ordinis.

* Nota.

There was another Canon much like this made in another Council held under Stephen Langton Arch-Bishop of Canterbury at Oxford not long before, in the Year 1222. to this effect, *Quod Clerici Beneficiati aut in sacris ordinibus constituti in Hospitiis suis publice tenere Concubinas non audeant, nec etiam alibi cum scandalo accessum publicum non habeant ad eas.*

So that it appears clearly by these Canons that Clerks were not in those days positively and absolutely forbidden to keep Concubines, but it must not be done *publice nec cum scandalo*, nor must they have *publicum accessum*.

Dispensations
for Concubi-
nage.

Hist. H. 8. by
my Lord Cher-
bury. p. 131.

Art. 74.

Art. 91.

And it appears by the *centum gravamina* that were presented to the Pope about the year 1521. by the German Princes, that it was one of the grievances of that Nation, that the Pope permitted Clerks, Religious, and secular Persons to live publicly with their Harlots and get Children; and that in most places the Bishops and their Officials not only tole-
rated

rated Concubinage upon paying Money in the more dissolute sort of Monks, but also exacted it of the most continent saying, it was then at their choice whether they would have them or no.

So upon the whole matter, it seemes, it was no offence in a Clergy-Man, that had a dispensation to keep a Concubine privately in a nooke without scandal, and go to her in the dark; but to keep a Wife of his own was a sin against the Holy Ghost, he must be deprived, he must be deposed. And therefore I cannot blame the German and French Laity, that they were so solicitous in the Council of Trent to have their Priests Married, being loath, as should seem, to trust their Wives and Daughters at confession with Priests that had not Wives of their own. And it was no less a Religious than prudent expression of Pope Pius the Second, that though there was many weighty reasons why Priests should be restrained from Marriage, yet the reasons for restoring them their Wives were the more weighty.

I would not have the Reader to think that I speak this to reproach the Church of Rome with this matter as any of the allowed Doctrines of that Church; for I know there is many very severe Canons against the incontinence of priests, and not only, but that forbids

Calvins Inst.
lib. 4. c. 12.
Sect. 23.

Dyer. 133. p. 1.
2 H. 4. 16. a. a.
Cap. de uxora-
tis a beneficiis
amovendis, ubi
supra.

them to keep any Women in their Houses, but Mothers, Sisters, and other near Relations, to avoid scandal and temptations. But I write this to shew the corruption of the Court of Rome, for whilst the Pope has power to dispence with the Canons of the Church, Mony will make the best ineffectual cheat.

Having given the Reader this Historical account concerning the restraint of the Marriage of Priests, and the success of it, I will in the next place shew what Acts of Parliament have been made relating to this matter, and which are in force at this day.

1 H. 7. cap. 4.
Statute that
the Bishops
should imprison
Priests for
Incontinence.

In the first year of H. 7. there was an Act made, that it should be lawful to all Arch-Bishops, and Bishops, and other Ordinaries, having Episcopal Jurisdiction, to punish and chastise such Priests and Clerks and Religious Men, being within the bounds of their Jurisdiction, that should be convicted before them, by examination and other Lawful proofs requisite by the Law of the Church, of Advowtry, Fornication, and Incest, or any other fleshly incontinency, by committing them to Ward and Prison, there to abide for such time as shall be thought to their discretions convenient for the quality and quantity of their Trespass. And that none of the said Arch-Bishops, &c. be thereof chargeable, of, to, or upon any Action of false or wrongful Imprisonments, but

It seems a Canon would not justify an Imprisonment.

but that they be utterly thereof discharged in any of the Cases aforesaid by vertue of this Act.

This Law for ought I know stands still in force, but there was a severe Law made in the 31 H. 8. whereby it was made Felony for a Priest carnally to use a Woman to whom he had been Married or contracted; or if he kept company or familiarity with her, or if any Priest kept a Concubine, as by paying for her board, maintaining her with Money or other gifts, or means to the evil example of others, he should forfeit all his Goods Chattels and Spiritual promotions, and be put in Prison for the first offence, and the second offence to be Felony.

31 H. 8. c. 14.
made Felony
touse their own
Wives.

But this seeming too severe, was the next Year repealed, and it was enacted, That such Offender should for the first offence lose all his Goods Chattels and Debts, and lose the profits of all his Ecclesiastical promotions; but one for his life, for the second offence to forfeit his Goods Cattel and Debts, and the profits of all his Lands and of all his Spiritual Benefices, Promotions and Dignities for his life. And for the third offence should make the like forfeiture, and be Imprisoned during life.

32 H. 8. c. 14.
mitigated.

By an Act of Parliament made in the 31 of H. 8. which is commonly called the Act of the six bloody Articles, by the third Article it was declared, that Priests after they

31 H. 8. c. 14.
The 6 Articles
make the marriage of
Priests Heresie.

have received Orders might not Marry, and to affirm the contrary thereof was made Heresie and Treason by that Act: but this bloody Act was repealed by 1 E. 6. cap. 12.

All Laws against marriage of Priests made void.

Children legitimate.

By the Statute of 2 and 3 E. 6. cap. 21. all Laws, Statutes, Canons, Ordinances and Constitutions made against the Marriage of Priests are made null and void.

And by another Statute made the fifth and sixth of E. 6. cap. 12. It is adjudged and declared, that the Marriage of Priests is Lawful, and legitimates their Children, & makes them capable to endow their Wives, and to be Tenants by the Courtesy. But these Laws were repealed by the Stat. of 1 Maria cap. 1.

1 Jacob. c. 25.

However it came to pass I know not, but for ought I can find, these Acts lay repealed all Queen Elizabeth's time, till 1 Jac. then the latter Act was revived and made perpetual, and their Children made legitimate.

So that upon the whole matter all acts of Parliament, Canons, Constitutions, &c. that restrain the Marriage of Priests, or that Illegitimates their Children, are made null and void; but the Canons and Acts of Parliament that punish their Incontinency stand in force. Next let us see what Priviledg the Clergy have right to at this day.

C H A P.

C H A P. XI.

The Eleventh Chapter shews, what Priviledges belong to the Clergy at this day by the Common and Statute Laws of this Realm.

THE Laws of this Realm have allowed the Clergy in holy Orders many great Priviledges: First, in their Persons, they are not compellable to serve in any Temporal Office, as Sheriff, Constable, Overseer of the Poor, &c. Neither can they be prest to serve in the Wars: neither may they be arrested in the Church, or Churchyard, when they are attendant on divine Service, upon pain of Imprisonment, and ransom at the Kings pleasure, and likewise to make agreement with the Party.

And by a Statute made 1 Marie, It is enacted:

That if any Person, &c. of their own Power and Authority at any time, &c. shall or do willingly or of purpose by open and overt word, fact, act or deed maliciously or contemptuously molest, lett, disturb, vex or trouble, or by any other unlawful way or means disquiet or misuse any Preacher or Preachers, &c. licensed, allowed or authori-

The Priviledge of the Clergy.

2 Inst. 3.º

625..

4.º

May not be Officers temporal.

3 E. 3. c. 5..

1 R. 2. c. 15.

Must not be arrested in Church or Churchyard.

1 Marie Sell
2. cap. 3.

Must not be disturbed praying or preaching.

zed to preach by the Queen, or by any Archbishop or Bishop of this Realm, or by any other lawful Ordinary, or by either of the Universities, &c. or otherwise lawfully authorized or charged by reason of his or their Cure, Benefice, or other Spiritual Promotion or Charge, in any of his or their Sermon or Collation in any Church, Chappel, or Churchyard, or in other place appointed to be preached in.

Or if any Person, &c. shall maliciously, willingly or of purpose molest, lett, disturb, vex, disquiet, or otherwise trouble any Parson, Vicar, Parish-Priest or Curate, &c. saying, doing, singing, ministring, or celebrating mass, or other divine Service, Sacraments, &c. that at any time then after shall be allowed, set forth or authorized by the Queens Majesty.

That the Offender upon Conviction before two Justices of the Peace, shall by them be committed to the Goal without bail or mainprise for three months, and after to the next Quarter Sessions: where if he repent and be reconciled, then to be discharged of his Imprisonment, finding sureties for his good behaviour; and if he fail therein to be continued till the next Quarter Sessions, &c.

This Act though made in the time of Popery is still in force, and may be executed upon such as disturb the present Ministers, Parsons, Vicars and Curates,

&c.

&c. And though it refer to such Church-Service as then after should be settled by the Queen, yet I conceive it extends to her Successors; and a settlement by Act of Parliament is a settlement by the King in the most superlative manner; and the late Act for Uniformity declares and enacts, that all former Acts for Uniformity of Common Prayer shall be of force, and extend to the Book of Common Prayer. 14 Car. 2. c. 4.

The Bodies of Clergy-men cannot be arrested upon any *Capias* sued forth upon any Statute-Staple or Statute-Merchant; for the Process are made out conditionally *Si Laicus fuerit*: and if the Sheriff or any other Officer arrest a Clergy-man, upon any such Conditional Process, I conceive an Action of false Imprisonment lies against him that does it, or he may have a special *Superfedeas* out of the Chancery, (that is, the Curators Office.) 2 Inst. 4. Regist. 147.

And every Parson, Vicar, &c. is by the Common Laws of England free from the payment of tolls in all Fairs and Markets, not only for all the Goods and Merchandizes gotten upon their Church-Livings, but also for all Goods and Merchandizes by them bought to be spent upon their Rectories and Church-Livings. Priviledge in their goods. Regist. 260. 2. Free from Toll.

And

**Pontage,
Murage,**

And they are quit of Pontage, Murage, and other like charges; and if they be distrained for any of these, they may have a Writ out of the Chancery, as aforefaid, made of course without petition or motion, under the great Seal of England, directed to the party that distrains or disturbs them for any of these things, commanding them to desist: and if such Writ be not obeyed, the Cursitor of Course will make out an *alias* and *pluries*; and if none of those will be obeyed, an Attachment to arrest the party and detain him till he obey: and this Writ is called a Writ *De essendi quietum de Toloneo*, which you may see in the Register or in the *Natura brevium*.

Regist. 260.1.

F.N.B. 227.f.

**Not bound to
appear at
Leets and
Sheriffs Turns.
Regist. Or.
175.2.
F.N.B. 160.c.**

They are not bound to appear or do suit at the Sheriffs Turn, or any Leet or Law-day; and if they shall be distrained so to do, they may have a Writ of Course in the Chancery directed to the Lord of the Leet, commanding him to forbear distraining them for any such Cause, with like process as in the last for his contempt.

**Stat. 13 E.
2 Inst. 491,
492, 493.**

And by the Statute of *circumspecto Agatis* it is enacted, *De violenta etiam manuum injectione in clericum, & in causa defamationis placitum tenebitur in Curia Christianitatis, dummodo ad correctionem peccati agatur; & non petatur pecunia.*

And

And if a Clergy-man have Lands, by the tenure of which he is subject to be Bayliff, Reave or Beadle, and be chosen into any such Office by reason thereof, he has a Cursory Writ out of the Chancery to discharge himself.

So if the Sheriff or Collector of the Tenth or Fifteens will disturb them in the Lands belonging to their Churches, &c. they may have the like Writ for their discharge, and like Process for disobeying of it, *ut supra*.

But it hath been held, that Tithes may be extended upon an *Elegit* for the debt of the Parson, *quod mirum*: But the *Elegit* being given by a Statute in which Tithes are not excepted, it will draw in Tithes.

Anciently if a Clergy-man had been convicted of any Murder, Robbery, Burglary, &c. he was upon the demand of his Ordinary to be delivered over to him, where he was to make his Purgation according to the Rules of the Ecclesiastical Laws; and if he cleared himself, he was acquit * without any regard to his Conviction at Common Law; but if they adjudged him guilty, then he was to be degraded and kept in Prison: and this was confirmed to them by several Acts of Parliament. But this privilege was never allowed to them in this Kingdom in Treason, petit Treason, or Sacrilege.

And

Regist. orig.
187 b.
F.N.B. 175. b.
*Not to be Bay-
liff, Reaves,
&c.*
Regist. or.
188. a. v.
F.N.B. 175. a.
*Must not be
disturbed by
Collector of
Tenth.*

Harwood
vers. Palyn.
24 Car. 1. B.R.
per B.

2 Inst. 633,
634, 635.
*The Privilege
of Clergy in
criminal Cases.*

* Lindwood
cap. Clerici pro
suis criminibus
detent. gloss.
verb. pro con-
victis.
West. 1. c. 2.
Marlb. c. 27.
25 E. 3. cap. 4.
and 5.
4 H. 4. c. 3.

4 H. 7. cap. 13.

And a Delinquent might have had his Clergy *ad infinitum* till the Stat. of 4 H. 7. And though this priviledge of the Clergy be taken totally away in many Cases by several Statutes, and in other Cases Lay-men have it in common with the Clergy, if they can read as a Clergy-man; and though the delivery of them over to the Ordinary be totally abolished; yet the Clergy that are in Holy Orders at this day retain some of their ancient priviledges, which the Lay-men are not capable of.

For if a Clerk in Holy Orders be convicted (that is found guilty by the Petit Jury) of a Crime for which the benefit of the Clergy is allowable; at this day he shall not upon the allowance thereof be burned in the hand (as a Lay-man shall) upon the producing of his Orders; and if he have not them with him, the Court may, *ex gratia*, give him time to produce them till any other Assize or Sessions.

And a Clerk in Holy Orders at this day shall have his Clergy *ad infinitum*, from time to time, which no Lay-man can have above once.

The Goods of Clergy-men were by several Statutes exempted and freed from the Kings purveyance; but his Majesty having by Act of Parliament graciously released this duty, the Laity hath the same priviledge.

St. 3 E. 1. c. 1.

14 E. 3. c. 1.

18 E. 3. c. 4.

1 R. 2. c. 3.

Purveyance.

A Clergy-man shall not be amerced the higher in respect of his Church-Living or Benefice.

2 Inst. 627.
Not amerced
for the Church-
land.

Nor shall any execution be executed upon the goods of his Church, nor any distress taken in the ancient Fee thereof; but otherwise it is of Lands of late purchase: and if he fear any such thing he may have a Protection in Chancery *cum clausula*, (*Quia volumus*.)

Regist. orig.
289.
F.N.B.29.
No Execution
upon the goods
of the Church.

If an Action of Trespas, Debt, Account or other Action, wherein process of *Capias* lies, be brought against a Clerk in Holy Orders, and the Sheriff upon the Original return that the Defendant is *Clericus Beneficiatus nullum habens. Laicum feodum ubi summoniri potest*; in this case the Plaintiff cannot have a *Capias* to arrest his body, but a Writ to the Bishop to compel him to appear.

2 Inst. 4.
No Capias a-
gainst a Clerk.
9 E.3.30.
24 E.3.44.

And by a Statute made in the fifth year of E. 3. it is recited, *That as well divers Priests bearing the sweet body of our Lord Jesus Christ to sick people, and their Clerks with them, as otherwise divers other persons of Holy Church, whilst they attend to divine Services, in Churches, Churchyards, and other places dedicated to God, be sundry times taken and arrested by Authority Royal, and commandment of other Temporal Lords, in offence of God and Holy Church, and also in disturbance of such divine Services: the*

50 E.3.6.5.

King

*King wills, and grant, and defends up-
on grievous forfeiture, that none do the same
from henceforth: so as collusion or feigned
cause be not found in any of the said per-
sons of Holy Church in this behalf.*

1 R. 2. cap. 15.

In the first year of R. 2. there was a-
nother Statute made to the like effect,
with this added, *That the party convicted
should be imprisoned, ransomed, and made
agree with the party so arrested.*

Co. 12. 100.

So that if any Parson, Vicar or Priest
be arrested in going, staying, or returning
to do divine Service according to his
duty, he may have an Action upon this
Statute, and recover damages, and have
the party fined and imprisoned that made
the Arrest, and the Clerk that is assistant
may have the benefit of these Laws.

*Priviledge of
the Clergy con-
firmed by seve-
ral Parlia-
ments.*

And note, that all the Priviledges of
the Church of England are confirmed by
the Ancient and good Statute of *Magna
Charta*: And so they were for the most
part at the opening of every other Par-
liament after, till the beginning of the
Reign of H. 5. How it began then to be
discontinued by the negligence of the
Clergy, or for what other cause, I know
not.

And so having thus briefly mentioned
many of the priviledges of the Clergy,
whereof the Common Law takes notice,
and to which they have right at this day,
by the Laws and Statutes of this Realm,

next

next I will shew the Reader what Priviledges they pretend unto, at, and by the Canon and Civil Law, which Mr. Lindwood reckons up in fourteen particulars:

Primo, in hoc quod non conveniantur coram Judice seculari.

Chap. Item
Statutum
verb. Clericali
privilegio.

But this Priviledge has not been allowed to them here in England, and this was resolved in the 7th year of H. 7. in the case of one Dr. Horsey, Chancellour of the Bishop of London, of which case for the rarity I will give the Reader a brief account, and it was thus:

Kelway 1821
&c.

One John Hunn a Merchant of London had prosecuted Horsey in a Præmunire, whereupon Horsey caused Hunn to be arrested for suspicion of Heresie, and committed him to Lollards Tower, being the Bishop of London's prison, and in a morning soon after the Prisoner Hunn was found dead and hanged in Prison, and it was given forth, that he had hanged himself in his Girdle; but notwithstanding it was believed, that Horsey and the Goaler had murdered him. This coming to the Goalers ear, he took sanctuary at Westminster; upon which and other great Circumstances Horsey and the Goaler were by a Coroners Inquest in London, upon view of the body, found guilty of the murder; and Horsey, as should seem, being in Orders (I dare not say Holy,) stood

stood upon this Priviledge, not to be tried before Temporal Judges. And this being a dispute between the Kings Prerogative and the Priviledge of the Church, the King at request of the Temporal Lords and many of the Commons in Parliament, called before him at the Black-fryers divers of his Spiritual Council, Divines and Canonists; where the Clergy had one of their Council argued for their Priviledge; and Doctor Standish a Learned Divine argued for the King; but the great offence taken was against the Abbot of Winchcomb, who in his Sermon preached at Pauls-Cross in the time of the Parliament, had affirmed, that the Act made 4 H. 7. (which restrains such Malefactors that were not in Holy Orders, and once had had the benefite of the Clergy, that they should not have it a second time) was against the Law of God, and Priviledge of the Clergy, and that the makers of the said Act had incurred the censures of the Church. Soon after Doctor Standish who had argued for the King, was cited before the Convocation, and there charged with matters of Heresie arising from matters which had passed in his Argument, whereupon he made his application to the King, who being satisfied of the justness of his Cause by Doctor Vessey, Dean of his Chappel, assembled all his Judges and Council Spiritual and

Tempo-

4 H. 7. c. 23.

Temporal, and divers of the Parliament Men; and after hearing of Divines, &c. the Judges declared, That those of the Convocation House that were at the awarding of the Citation against Doctor Standish, were in a Premunire. And Fineux Chief Justice did declare in the name of all the Judges, That the Convention of Clerks before Temporal Judges had been maintained by many good and religious Kings of this Realm, and many good and holy Fathers of the Church had been obedient to it, and content with the Law of the Land in this point, &c. And Doctor Veisley gave the reason, Because the Canon in that point was never received or allowed in England. But the Clergy not being satisfied, the two Archbishops (who affirmed that they were bound by Oath to maintain the Privileges of the Church) moved the King, that to avoid the † Censures of the Church, he would refer the matter to the Pope: But H. 7. like a Father of H. 8. answered, That he by the decree and sufferance of God was King of England, and the Kings of England in time past had no Superior but God only; and therefore know, that we will maintain the right of our Crown and our Temporal Jurisdiction, as well in this point as all other. And after Horsey (that all this while had been protected in the Archbishops House*

* Nota.

† Nota.

M

at

at Lambeth) the Bishops having made his peace with the King, appeared privately in the Kings Bench, and pleaded Not guilty to the Inquisition; and Erneley the Kings Attorney confessed the Plea, whereby Horsey was discharged (the more pity) and the Bishops promised to dismiss Standish; and so this point was settled against the Church, as 'twas very great reason. I shall make no Comment upon the Case, though there are many things in it worth observation, and those that are not satisfied with this short account of this Case, may read it at large in Kelway's Reports with all the Circumstances, and the Reader will not think his time ill spent, but with me praise God, that the King and Nation are freed of the Popish bondage and Clergy.

2. The Second Priviledge mentioned by Lindwood, is, *Quod verberans Clericum incidit in Canonem.*

This Priviledge is confirmed to the Clergy by the Statute of *Circumspecte Agatis*, that the Spiritual Court should have Jurisdiction, *de violenta manuum injectione in Clericum*; but the end of such Suit in the *Spiritual Court* is only, *pro salute anime*, by Excommunication or Penance. And if a Clerk should sue in the *Spiritual Court* in point of damage, he runs himself in danger of a *Premunire*; for the Ecclesiastical Judge may

may proceed only *ex officio* to correct the sin. But if the Clerk will in this case recover damages, he must bring his Action at Common Law; and note, that such Suit in the *Spiritual Court* can only be sued by one in Holy Orders.

3. The third Priviledge *Lindwood* mentions is, *Quod non vocantur ad onera secularia.*

This Priviledge the Common Law allows; but it must be intended of such Charges as were at Common Law, but not of new Charges by Statute Law; in which the Clergy are not exempted, as hath been said before in the beginning of this Chapter.

4. The fourth Priviledge *Lindwood* mentions is, *Quod possunt facere Collegium ubi hoc Laicis non licet.*

It is true, that before the Reformation the Clergy have erected Colledges, Abbies, Priories, and other Spiritual and Religious Corporations by the License of the Pope or the Bishop; but generally confirmed by the Kings: But without License of the Bishop of the Diocess, it was forbid to erect any such by several Canons; and by such License I take it a Lay person as well as a Clergy man might have erected a Colledge, &c. But at this day certainly the Clergy have no greater Priviledge than the Laity, and no such Corporation can

Conc. Agatha
Can. 18.
Concil. Aure-
lian. Can. 18.
q. 2. Grat.

be erected but by the Royal Authority.

5. The fifth Priviledge reckoned by Lindwood is, *Quod possunt vindicare rem concessam Ecclesie ante deliberationem.*

2 Inst. 492.

This Priviledge is of no use here in England, because the *Spiritual Courts* have not power to determine the right or property of Land or Goods.

6. The sixth Priviledge is, *Quod eodem Privilegio gaudent persona & familia.*

This Priviledge holds no further here in England, than in such particulars as are mentioned in the former part of this Chapter.

7. The seventh Priviledge by Lindwood mentioned is, *Quod facientes Statuta contra Clericos sunt ipso facto Excommunicat.*

He that would attempt to put this priviledge in Execution, would endanger to run himself in a great *Premunire*; and many Statutes have been made against the Clergy in the height of Popery, as the Reader may find in many parts of this Book.

8. The eighth Priviledge is, *Quod soli Clerici possunt beneficium Ecclesiasticum obtinere.*

This is allowed without dispute.

9. The ninth is, *Quod per literas impetratas contra Laicum, cum clausula generali non potest Clericum conveniri.*

I must leave this to the *Civilians* to determine, for I must ingeniously acknowledge I do not understand the meaning of this nor the next; which is,

10. *Quod in Civili nomina sportularum non tenentur dare nisi quatuor siliquas.*

Hec tamen de jure Canonum, non debentur, says the Author, and then proceeds;

11. *Quod de Acquisitis licet sint in potestate Patris possunt testari.*

This and the next Priviledges are in the Spiritual Law and Courts, and not opposed by the Common Law.

12. *Quod sine consensu Patris agere possunt pro rebus suis recuperandis.*

13. The thirteenth I must leave as I find it; and it is, *Quod non Pignori.*

14. The last is, *Quod si sciente Domino servus efficiatur Clericus liberatur à Domini potestate.*

I do not find any such Priviledge allowed in *England*; but it may be reasonable enough; these four last are only known to the *Civilians*, to whom I leave them.

And so much for the Priviledge of the Clergy by the Canon and Civil Laws; but I conceive they receive more benefit by those the Common Law allows to them.

C H A P. XII.

The Twelfth Chapter shews, how the Law stands concerning Churches, Chappels, and Church-yards, in whom the Freehold is, and how to be repaired, and concerning Seats, Burials, Tombs, Coats of Arms, and other Ensigns of Honour in memory of the dead, and of Church Ornaments, and at whose charge to be provided, and what remedy against those that shall commit any Trespass in the Church, Church-yard, or in breaking up Tombs, taking, carrying away, or imbezelling any of the Goods, or Ornaments of the Church, &c.

The word *Church* is taken from the Saxon word *Ciric*, or *Ciric*, which name is still retained in the North parts of *England*, and in *Scotland*, by changing the *C* into *K* as was usual with the English Saxons, in Latine *Ecclesia*, or *Basilica*, from the Greeks, and it hath in the Holy Scriptures several acceptations; for sometime it is taken for one Family of the faithful People of God, as *1 Cor. 16. 19. Rom. 16. 4, 5*. Sometimes for the

Church undedicitur.

The several acceptations,

Christian People of one Country or Province, *Rom. 6. 23.* Sometimes a *Council* or *Synod* is taken for the Church: *Mat. 18. 17.* and sometimes, *pro universa fidelium per totum terrarum orbem diffusorum multitudine*: And sometimes for the *Material Church*, as *1 Cor. 11. 18,* and *14, 34.* And that is the Church of which I am now to discourse, *That is a Building made of Stone, Brick, Timber, and other materials, for the meeting of Christians to hear the word of God read, and preached, and to joyn in Prayer, and other Religious Duties; built by the Licence of that Bishop in whose Diocess the same is erected, and by him Consecrated to that Service, an Office peculiarly belonging to the Office and Dignity of the Bishop.*

The material Church, quid.

Distinctio 1. Nemo Ecclesiam.

The Manner of founding of Churches.

Causa 16, q. 1. quicunq; q. 3. Lator Concil. Chalcedon 1. can. 4.

** Ut Major Ecclesie per circuitum 40. passus habeat. Capella vero*

vel minoris Ecclesie. 30. c. 17. q. 4. de consecratione distinct. 1. nemo Ecclesiam. See Sir Tho. Ridleys view of the Civil and Ecclesiastical Laws 191. more of this matter.

fore

fore the Sacraments were not to be administered in it.

But by the Common Law and Custom ^{3 Inst. 201.} of England, any good Christian may ^{Who may build a Church.} build a Church without the Licence of the Bishop, which was confirmed by the Pope at the request of King *John*, with this qualification, so that it were with the Bishops consent, and not prejudicial to any antient Churches: But however the Law takes no notice of them as ^{3 Inst. 203.} Churches, nor have they any privilege, till they be Consecrated by the Bishop.

And in some Cases though a Church have been Consecrated, it must be reconsecrated, as in case any Homycide, Adultery, or Fornication shall be committed in it, or the Church burned, but the rebuilding of the Walls, if the Altar (that is the Communion Table) were not removed, requires no new Consecration, nor Churches consecrated by Hereticks, *In fide Sanctæ Trinitatis in forma Ecclesiæ*, ^{Where a Church shall be reconsecrated. Concil. Niceæ pars. 3. distinct. 1. Ecclesiis semel ibid. Simon.} ^{ibid.} are not again to be Consecrated.

The Church consists of three principal parts, that is, the Belfray, or Steeple, the Body of the Church with the Isles, and publick Chappels, and the Chancel. ^{Deviston.}

The freehold of the whole Church, and Church-yard, are in the Parson or Rector, and therefore the Parson may have an Action of Trespass against any body that shall do any Trespassable act in ^{In whom the Freehold is. 11 H. 4. 12. a. 21 H. 7. 21. b. Cro. Jac. 667.}

Noy 104.

Who is to repair Churches.
2 Inst. 653.
Coke 5. 67.b.

How Churches were antiently repaired.

C. 10. 9. 3.
Quia vero & placuit ut nullus Concil. Braga. cap. 2.
Cathedraicum, how it became due.

in the Church, or Church-yard, as in breaking Seats annexed to the Church, in breaking the Windows, cutting the Trees, or taking away the Leads, or any of the materials of the Church, or for breaking Windows, the party may be indicted, and fined, and bound to his good behaviour.

The Body of the Church, the Belfrey, and all publick and common Chapels, within, or adjoining to the Church, are by the Laws and Custom of *England*, to be reedified, maintained, and repaired, at the charge of the Parishioners and Landholders within the Parish, and herein the Common Law, and custom of *England* is kinder to the Clergy, then in other Countries, where the whole charge lyes upon the Rector.

Antiently the Bishops had a third part of the Tithes, & Offerings, in some places a moiety, and in some places a 4th part, & in consideration thereof were bound to the repair of the whole Church; but upon a Release of this interest to the Rectors, they were acquitted of the repairs of the Churches, and had only Two shillings for the Honour of the Bishops Chair, in lieu thereof, called *Cathedraicum*, which duty, as I take it, was never paid in *England*, and the reason might be, because the Bishops here were never charged with the repair of the Churches, and had therefore no share in the Offerings, *tamen inde quere.*

The

The Church-Wardens are to raise the Mony for the repair of the Church, and are to make the repairs, and for the raising monies to that purpose, they are to make their levies in this manner.

Who is to raise Mony for the repair of the Church.

The Sunday before the Church-Wardens design to make a levy, they are to give publick notice in the Parish Church, immediately after Common Prayer, of the time and place designed for making the intended Levy, and then at the time and place appointed, the Church-Wardens, and the Parishioners, there met, are to consider what Sum of Mony will be necessary to raise for such repairs, as shall be then needful, and after they, or the Major part of the Parishioners there met, have agreed what sum is fit to be raised, then they, or the major part there present, are to proceed, and make an equal Levy upon all the Parishioners and Landholders within the Parish, and if any of the Parishioners refuse to pay their rates, being demanded by the Church-Wardens, they are to be sued for, and to be recovered in the Ecclesiastical Courts, and not elsewhere.

The manner to make a Levy for the Church.

Co. 5. 67. b.

How it is to be recovered.

Stat. Circum-
specte Agatis.
13 E. 1.
Regst. or. 44.
b.

Britton l. 1.
cap. 4.

Prohibition lyes where the bounds of the Parish are controverted.

Rolls 2. 291. l.
1. 5. 4.

But in case the bounds of the Parish come in dispute in the Ecclesiastical Court, that is, if the party assessed aver that the Land for which he is assessed lyes in another Parish, and not in the Parish where

it

it is assessed, if the party be contentious he may have a prohibition and try it at Common Law.

What to be done if the Parishioners will not make a Levy.

cap. Archidiaconi verbo subpœna.

And if the Parishioners when they come together at such meeting, refuse or neglect to joyn in making such assessment, or refuse to meet, I conceive the Church-Wardens having just cause for such assessment, may proceed alone, for if the Church-Wardens shall neglect to make the repairs when duly admonished by those that have the power to visit within a certain time the Ordinary or other visitors shall limit, they may proceed against the Church-Wardens by Ecclesiastical censures to compel them to do it: And the Law never compels any body to do a thing they have not means to effect, and it should seem in this case that the Parishioners are likewise punishable by the Ecclesiastical Judge, for their neglect in this kind.

How to be relieved against unequal Assessments.

Co 5.67.a.
Landlords not Taxable for their Rents.

And if any person find himself aggrieved at the inequality of any such assessment, his Appeal is to the Ecclesiastical Judge who is to see right done.

Every one that holds any Lands within the Parish, is in Judgment of Law a Parishioner, chargeable to this Tax, but the Landlord in respect of the Rent he receives, is not chargeable to the repair of the Church; nor in that respect can be said a Parishioner.

And

And these levies are not chargeable upon the Land, but upon the person in respect of the Land, for the more equality and indifferency.

These Taxes are upon the person in respect of the Land.

But there has been some question made, where one that holds Lands in one Parish, and resides in another, may be charged to the Ornaments of the Parish Church where he doth not reside; and some Opinions have been, that Forrainers were only chargeable to the Shell of the Church, but not to Bells, Seats, or Ornaments.

Who is chargeable to the Ornaments.

But I conceive the Law to be clear otherwise, and that the Forrainer that holds Lands in the Parish is as much obliged to pay towards the Bells, Seats, and Ornaments, as to the repair of the Church, otherwise there would be great confusion in making several levies, the one for the repair of the Church, the other for the Ornaments, which I have never observed to be practised within my knowledge.

2 Brownlow
16.
Rolls 291.
k. 1. and 2.
Landholders chargeable.

Landholders are, and the reasons.

Secondly, It is possible that all, or the greatest part of the Land in a Parish may be held by Forrainers, and it were unreasonable in such case to lay the whole charge upon the Inhabitants, which may be but a poor Shepherd.

Thirdly, The reason alledged against this charge upon the Forrainers is chiefly, because the Forrainer has no benefit by

by the Bells, Seats, and Ornaments.
 Coke 5.67.b.. Which receives an answer in *Jeofferies* Case, for there it is resolved, that Landholders, that live in a Forraign Parish, are in judgment of Law Inhabitants, and Parishioners, as well in the Parish where they hold Lands, as where they reside; and may come to the Parish meetings, and have votes there as well as others.

Cap. licet parochiani.

For Authorities in the Case it is clear by the Canon, that all Landholders *in ipsis degentes, vel alibi, ad quevis onera Parochianos ipsos ipsam Ecclesiam & Ornamenta ejusdem concernentia, & eis in his de jure vel consuetudine incumbentia, consideratis possessionum & reddituum hujusmodi quantitativibus, cum ceteris parochianis Ecclesiarum predictarum, quoties opus fuerit, contribuere teneantur.*

Authorities.

And I have seen a report under the hand of Mr. *Latch*, that it was resolved in *Willymots* Case. *H.6. Jac.B. R.* and in *Chesters* Case, 10 *Jac.* that a Forraigner that held Lands in another Parish wherein he did not reside, was as much chargeable to the antient Ornaments of the Church, as Bells, Seats, &c. as those that lived in the Parish; but that such Landholders, could not be charged to new Bells, Organs, &c.

1 Bulst. 20.

And Mr. *Bulstrode* reports a Case about the same time, That the Chief Justice *Fleming*

ming, and Mr. Justice *Williams* were of the same Opinion, and gave this reason, That the Forraigner might come to Church if he pleased. And having said thus much to this matter, I must leave it a Quære amongst these diversities of opinions. *Quære.*

It hath been resolved that the Major part of the Parishioners may make a Levy for new Bells, or Organs.

But if in the making a Levy for the repair of the Church, some of the Parishioners, or Landholders are omitted, if the Church Wardens shall sue upon such a Levy, a Prohibition lyes in the Case, *tamen quære.*

Rolls. 2. 291.
k. 4.
Additions
Popham. 187.
*If some should
be omitted in a
Levy.*
Rolls 2. 291.
k. 3. contra
ibid. 290.
H. 10.

Though generally all the Parishioners and Landholders within a Parish ought to be taxed towards the repair of the Church, as has been said; yet that Rule admits some exceptions.

For first, the Rectory or Vicarage which is derived out of it are not chargeable to the repair of the Body of the Church, Steeple, publick Chappels or Ornaments, being at the whole charge of repairing the Chancel.

*Who may be
freed from
these Levies.
cap. licet pa-
rochiani.
The Rector and
Vicar.*

Secondly, The Founder of the Church may prescribe, that in respect of the Foundation, he and his Tenants have been freed from the charge of repairing the Church.

*The Founder.
H. 3. Car. 1.
B. R. per
Henden.*

Thirdly,

*Those of a
Chapelry.
Hob. 67.
Rolls 2.290.
J.1. and 2.*

Thirdly, It hath been resolved that the Inhabitants of a Chappelry may prescribe that in consideration that they have time out of mind paid Three shillings Four pence, to the repair of the Mother Church, or at their own charge repaired a certain part of the Mother Church, they have been freed from all other charges about the repair thereof.

Noy 41.

But a prescription by the Inhabitants of a Chappelry, that because they have time out of mind repaired some part of the Fence of the Church-yard, they have been freed from the repair of the Mother Church, has been disallowed.

*Marsh. 91.
Hob. 67.
Rolls 2.290.
H. 7. and 8.
contra. Bulst.
s. 16, and 17.
according, and
so it was re-
solved.*

*P. 42. Eliz.
B. R. between
the Chapelry of
Coxwell, and
Church of
Faringdon in
Berksbire.*

*Quere.
Roll. 2. 289.
H. 5.
Andrews
versus Hur-
ton. H. 4. Car. 1.
Hetley 133.*

And yet there hath been some resolutions, that the Inhabitants of a Chapelry may prescribe, that in consideration they have repaired their own Chappel time out of mind at their own charge, that they have been freed from the charge of repairing the Mother Church; but there being Opinions to the contrary, I must leave it as a *Quere*: but the better Opinion seems against such prescription.

If a Petit Chapman take a standing weekly in the Market to sell his Wares, he shall not for this be charged to the repair of the Church.

A Prescription that the Arrable Lands within a Parish had time out of mind been only charg'd to the repair of the Church, has been disallowed, for the

the Houses are as well chargeable as the Land.

If two Churches be united the repairs of the several Churches shall be made as they were before the union. *Hob. 67. Churches united how to be repaired.*

And so much concerning the repair of Parish Churches, and publick Chappels annext to them, and as for the repair of other Chappels, I shall defer till I come to speak of Chappels.

The next thing to be spoken of is the Seats in Churches, built for the ease of the Parishioners to sit, kneel, and stand in, for the hearing the word of God read and preached, and joyning in Prayers, and other Religious Duties, with the other Parishioners. *Seats in Churches.*

These are to be built and repaired as the Church is to be, at the general charge of the Parishioners, unless any particular person be chargeable to do the same by prescription. *By whom to be repaired.*

The Seats ought to be regular, and of a moderate height, that the behaviour of the Parishioners may the better be observed; and if any body on their own heads shall presume to build any Seat in the Church, without the Licence of the Ordinary, or consent of the Minister and Church Wardens, or in any inconvenient place, or too high, it may be pull'd down by order from the Bishop, or his Arch-Deacon, or by the * Church-Wardens. *In what manner to be built. Who may build Seats.*

* Dainties
Case.
T. 2. Jac. C. B.

11 H. 4. 12. a. by the consent of the Parson, for the freehold of the Church, and all things annexed to it, are in the Parson, and therefore if any one presume to cut or pull down any Seat annexed to the Church, he may have an Action of Trespass against the misdoer (though he formerly set it up) if he do it without his consent, or order from the Ordinary; but if the Seal be set loose, he that built it may remove it at his pleasure, as I conceive.

Seats cut, or pull'd down, who shall have the materials.

What the Parson may do in the Church.

But though the freehold of the Church be in the Parson, yet he cannot pull down any of the Seats antiently erected, or of late erected, but by License from the Bishop, or by the consent of the Parson himself, and the Church-Warden.

Noy. 108.

If any Seats annexed to the Church be pull'd down, the property of the materials is in the Parson, and he may make use of them if they were placed in the Church by any one of his own head, without legal Authority; but for the Seats erected by the Parishioners by good Authority, I take it, the property of the materials upon removal is in the Parishioners.

Who may dispose of the Seats.

The Church-Wardens, with the Approbation of the Parson, may by Custom dispose of the Common Seats, built at the charge of the Parish, and place the Parishioners therein, according to their

their degrees and qualities; and where they have been so disposed time out of mind, it should seem the Bishop has not the disposal of them, at least to a Man Popham 140. and his Heirs, because they are attendant to the Messuage.

In *Boothby* and *Bayleys* Case, 'tis said Hob. 69. that the disposal of the Seats belongs to the Ordinary, but this must be intended where there is no prescription against it, or where the Church-Wardens misbehave themselves in the disposal; in such Case, upon Appeals, the Ordinary may interpose.

The Seats in the Chancel are properly in the dispose of the Parson, but it should seem that a Parishioner may prescribe for a Seat there, as well as in the Body of the Church. *Sir William Hall against Ellis. Noy. 173.*

But all that has been said before of Seats in the Body of the Church, must be intended of such Seats as no particular Parishioner has a right to by prescription; for wheresoever any Parishioner Owner of an antient Messuage, has a Seat by prescription, that is, by usage, time out of mind, there the Parson, Church-Wardens, or Ordinary, have nothing to do in the disposal of such Seats.

About Prescriptions for Seats in Churches, there hath been a great diversity of Opinions, for sometimes it has *S. dts by prescription. Cro. Jac. 667. Co. 12. 168.*

3 Inst. 202.
Noy. 129.

been held, that the Owner of an Antient Messuage might prescribe to have a Seat in the Isle of a Church, which himself repaired, after it went further for a Seat in the Body of the Church, which was repaired by him that prescribed to have it.

Buxton, ver-
sus Bateman.
T. 4. Car. 2.
B. R. Rot. 463.

But the Law is now settled in this Case, that a Man that is Owner of an Antient Messuage, may prescribe for a Seat in any part of the Parish Church, within which Parish such Messuage stands, although he have not used to repair it: and this was resolved in an Action of the Case brought by *Buxton*, against one *Bateman*, for disturbing him in a Quire, in the Body of *Tolgreave Church in Derbyshire*, which *Buxton* claimed by prescription to his House, by all the Judges of the Kings Bench, and after affirmed in a Writ of Error in the Exchequer Chamber, so that this point is now settled by all the Judges of *England*.

*Prescription
for burying.*
Carleton ver.
Hutton Noy
78.

And as a Man may prescribe for a whole Seat in a Church Isle, or Quire; so he may prescribe for the first, second, or other sitting, or place in a Seat; and in all these Cases of prescriptions, the Ordinary has nothing to do; but the matter is solely determinable at Common Law.

Co. Entries
8. b.

And as a Man may prescribe to have a Quire, Isle, or Seat in a Church, so

so he may prescribe to an Antient Mes-
suage to have the sole Burial of his
Dead, in such Isle, Quire, or place in the
Church.

Antiently none were admitted to be
Buried in the Church but Priests, and
those that were of clear life and conver-
sation.

There was likewise antiently a pay-
ment due for those that were buried,
called *Symbolum animæ*, or *pecunia Se-
pulchralis*, and this was paid, though the
Body were buried in another Parish.

But by the Canon Law, *Interdictum est
omnibus Christianis terram mortuis vendere
& debitam sepulturam denegare*. But
this must be intended in the Church-yard,
for by another Canon in the same Coun-
cil, it is expressly decreed, *quod nullus
Laicus in Ecclesia sepeliatur nisi in Cæ-
miterio*.

And by the same Council it is decreed,
that *ubi decimas persolvebat vivus, sepelia-
tur mortuus*.

Antiently there were no Church-yards
in Cities, nor burying of the dead, so
that the Arch-Bishop of *Canterbury*
could not be Buried in his own Cathed-
ral, till *Cuthbert*, Arch-Bishop of *Can-
terbury*, obtained License from the King,
that the Arch-Bishops might be Buried in
the Cathedral at *Canterbury*.

*Who may be
Buried in the
Church.
Spelmans
Concil. 590.
n. 9. 451. n. 29.
545.*

*Ibid. 517.
Payment for
Burials.*

*Nothing to be
paid for Bu-
rials.
Concil. Tri-
buriensis can.
16.
Can. 17.*

*Where one shall
be Buried.
can. 15.*

*No Church-
yards in Cities.
Spelmans
Concil. 290.*

*Who may be
Buried in the
Church yard.
13 q. 2. quæsta
& tribus, &
sepeliendum.*

*Who in the
Church.*

*Spelmans
Concil.
554. leges
canut cap. 20.*

*Who may set up
Tombs.
3. Inst. 202.*

*What remedy if
broken.*

By the Custom of *England*, every person (except such as are afterwards excepted) may at this day be buried in the Church-yard of the Parish where he dyes without paying any thing for breaking the Soyl.

And by the Custom of *England*, every Parishioner (except as hereafter is excepted) may be buried in any Common part of the Church, or Chancel, paying the accustomed Fee to the Parson for breaking the Soyl, which for most part is three shillings and four pence in the Church, and six shillings and eight pence in the Chancel; and this is only for the breaking of the floor, and that's the reason that in some places the Church-Wardens have the Fee for breaking up the Church, though of common right it belongs to the Parson, and in this the custom must be observed.

Sir *Edward Coke* is of Opinion, that any Person may erect a Tomb or Monument for the dead in the Church, Chancel, publick Chappels, or Church-yards, in a convenient place, (but I conceive it must be intended by License of the Bishop, or consent of the Parson and Church-Wardens) And that if any Body break it, the party that set it there may have an Action against those that break or pull it up, or deface it.

Some
Says

Some persons are denyed Christian Burial, and therefore such persons are excepted in what is said before, and may not be buried in the Church, or Church-yard, without special License from the Bishop.

Who may not be Buried in Church, or Church yard.
13, q. 2. placuit & ibid. fatendum & ibid. quibus.

That is, such persons as Murder themselves, dye Excommunicated, those that dye in any mortal sin, Sacrilegious persons and Usurers; but of Usurers the Canon holds not in England.

For Grave-stones, Winding-sheets, Coats of Arms, Penons, or other Ensigns of honour, hanged up, laid, or placed, in memory of the dead, the property remains in the Executors, and they may have Actions against such as break, deface, or carry them away, or an Appeal of Felony.

Gravestones, &c.
9 E. 4. 14. a.
Co. 12. 113.
3 Inst. 110.

The property of the Bells, Books, and other Ornaments of the Church, is in the Parishioners, and in the custody of the Church-Wardens, who may maintain an Action of Trespass against such as shall wrongfully take them away, and the Successors may sue this Action for the taking away in the time of their Predecessors, & the damages recovered shall be to the use of the Parishioners, but they may declare * *ad dampnum ipsorum*, or *ad dampnum parochianorum*, and either way good, and the release of one Church-Warden * shall not bar his Companion.

Whose the Bells, &c. are.
12 H. 7. 27. b.

Who may have an Action for taking them.

* Cro. Eliz. 179.
3 E. 4. c. b.
* Cro. Jac. 234.

*Property
changed by
Offering.*

34 H.6.10.
Co. 10.91.2..

*Goods may be
given to the
Church.*

11 H.4.12.
Cro.Car. 343.

*Reverence to
the Church,
and Church-
yard.*

Numbers 35.
v. 11.

*Where Sanctua-
ries were ta-
ken away.*

Stat. 26. H.8.
cap. 13.

By the Laws of *England* in the time of Popery, if a Stranger had taken my Goods, and offered them to an Image in a Consecrated Church, this had made as good a change of the property of my Goods, as though I had sold them in a Market overt; but if I found the Goods after in the Wrongdoers possession I might take them again.

A Man at this day may give or dedicate Goods to Gods Service in such a Church, and deliver them into the custody of the Church-Wardens, and thereby the property is immediately changed, and the Church-Wardens may have an Action for the taking them away.

There has always been great reverence given to Churches, and Church-yards, and other places Consecrated to Gods Service; and antiently Churches and Church-yards, were Sanctuaries for Traytors, Murderers, Robbers, Thieves, and other Malefactors; and many Laws were made for the regulation of them, and restraining that privilege, till at last Sanctuaries with great reason were totally taken away, for they were not used like the Cities of refuge under the Law, for those that unawares killed others, but for all People, be the Crime never so horrid.

In the 26 H.8. Sanctuaries were taken away in high Treason, in the 17th of H.8.

H. 8. they were taken away in wilful Murder, Rape, Burglary, Robbery in the High way, or in any House, or in any * Church, or Chappel, and in wilful burning any House or Barn with Corn.

But by a Statute made in the 21 year of King *James*, they were finally taken away, and abolished, they having too long continued for the Protection of the greatest Malefactors, a thing unfit for hallowed places.

But that Churches, and Church-yards, should not be profanely used, is evident from the example of our Saviour, who cast out those that bought and sold in the Temple, and overthrew the Tables of the Money changers, and the Seats of them that sold Doves, telling them, *My House shall be called of all Nations the House of Prayer, but you have made it a Den of Thieves.*

And in the Council of *Ments* it is forbidden, *ut in Ecclesiis aut in domibus Ecclesiarum vel * atriis placita secularia minime fiant.*

And by a Canon made in the 6th General Synod at *Constant.* buying and selling is forbidden in Churches, and Church-yards, wherewith a Canon of our own, made in the time of King *James* agrees.

And

Stat. 27. H. 8.
cap. 12.
* Frustra im-
plorat Eccle-
siam auxilium
qui in ipsam
deliquit c. 17.
q. 4. Ad Episc-
copos.
Stat. 21. Jac.
cap. 28.
Sanctuaries
finally
taken away.

Mark 11. v. 15.

Courts not to be
kept in
Churches, or
Church-yards.
can. 40.
* Church-
yards.
Fairs and
Markets not to
be in Churches
or Church-
yards.
Can. 76.
Can. 89.

Stat. Winton

And by a Statute made in the 13th year of E. 1. It is enacted, *That Fairs or Markets should not be kept in Churches or Church-yards, for the honour of the Church.*

Concil. Cabilonenſis can.

17.

No fighting,
&c. in Churches
and Church-
yards.

There is a Canon to this effect, *Quod nullus ſecularium, nec in Eccleſia, nec infra atrium ipſius Eccleſie, qualecunq; ſcandalum, aut ſimultates excitare præſumat, nec arma trahere, aut quemcunq; ad vulnerandum, aut interficiendum appetere, quod ſi fecerit communione priuetur.*

§ E. 6. cap. 4.

And to the ſame effect there was a Statute made in the 5th year of E. 6. That if any Perſon, &c. ſhould by words openly quarrel, chide, or Brawl, in any Church, or Church-yard, that then it ſhould be lawful for the Ordinary of the place, the matter of Fact being proved by two Witneſſes, to ſuſpend a Lay Perſon, *ab ingreſſu Eccleſie*, & a Clerk from the exerciſe of his Office as long as he ſhall think fit according to the quality of the Offence.

And that if any perſon ſhall ſmite, or lay violent hands upon any other in the Church, or Church-yard, then *ipſo facto*, every ſuch perſon ſhall be deemed excommunicate.

No ſtriking or
drawing Wea-
pons in the
Church or
Church-yard.

And if any perſon, &c. maliciously ſtrike another in any Church, or Church-yard, with any Weapon, or ſhall draw
any

any Weapon in any Church or Church-yard, to the intent to strike any other therewith, the Party thereof convicted by Verdict, or two Lawful Witnesses, before the Justices of Assize, Oyer and Terminer, or Justices of the Peace in their Sessions, shall have one of his Ears cut off, and if he have no Ears, then to be marked in the Cheek with a hot Iron, with the Letter F, & *ipso facto* Excommunicate.

It may be a question what the meaning of these words, *ipso facto* Excommunicate in this Act shall be understood, whether it shall be without sentence declaratory, or no, which is made a *Quære* in Dyer, but by the Canonists, there must be a Sentence declaratory.

And the Law so abhors violence and force to be used in Churches, and Church-yards, that it will not admit a Man to strike again in his own defence in a Church or Church-yard, and therefore the Plea of *de son assault demesne*, is not allowed for a good Plea in that Case.

And to make an Arrest in a Church or Church-yard, immediately after Divine Service, when it may be done elsewhere, is Indictable and Fina-

Ipsa Facto.
Dyer 275. p. 48.

Lindwood
cap. Quia in-
continentie
verb. ipso
facto.

*De son assault
demesne, no
Plea in a
Church, &c.*
Cro. Jac. 367.

*Arrest in
Churches, &c.
punishable.*
Cro. Car. 602.

And

*Ways through
Churches, &c.*
18 E. 4. 8. a.:

And yet it hath been held, that there may be a way through a Church, or Church-yard.

1 E. 6. cap. 4.
*Clergy taken
away in Sacri-
ledge.*

By the Stat. of 1 E. 6. The benefit of the Clergy is taken away from such as steal any Goods out of any Church or Chappel. For the punishment of such as disturb the Minister in the Church, whilst he is Reading Divine Service, or Arresting the Minister whilst he is attending Divine Service, see in the 11th Chapter before, and Stat. 50. E. 3. cap. 5. and 1 B. 2. cap. 15.

And so much for the Priviledges of Churches and Church-yards.

*Officers of the
Church.*

The last thing I have to speak relating to Churches, is the Officers belonging to the same, which in time of Popery were many, as *Ostiarii*, *Leitores*, *Exorcistæ*, *Acolythi*, *Psalmistæ*, *Cantores*, &c. He that minds to know the several Duties of all these Officers, or Orders, may satisfie himself in *Bellarmines* Disputations, or in *Gratian*, with the manner of their Ordinations.

*De Clericis
lib. 1. cap. 13.*

Amongst these the Church-Wardens, and Parish Clerk or Sexton, who perform several of these Offices are not reckoned, and those are now the only Officers of the Church of *England*, and of whom I am now to speak.

*Distinct. 23.
cap.*

*Quorundam
Clericorum
& dist. 25.
perfectus,
Ostiarus
may be taken
for a Clerk or
Sexton.*

*Church-War-
dens Office.*

The Office of the Church-Warden is to take care of the repair of the Church

Church, and has the Ordering of the Bells, and Seats, and is to provide all Books, and Ornaments belonging to the Church, and in his custody, and in their charge are all the Goods of the Church, and they are to provide Bread and Wine for the Communion, and to see there be a decent Communion Table, with a Table Cloath and Carpet, and Flagon, Plate, and Bowl of Silver, Gold, or Pewter, for the service of the Church, when the Communion is Administred, they are to make Levies, and raise Mony for the doing of all this in such manner as is before directed, and at the end of their Office they are to give an accompt of their receipts, and disbursements to the Parishioners, and what remains in their hands upon such accompt, with all the Goods of the Church in their custodies, they are to deliver over to their Successors, there are many things belong to their Office, but so well known I need not mention them.

These Officers by a Canon made in the time of King *James*, are to be chosen by the Minister and Parishioners; but if they cannot agree of the persons, then the Parson, Vicar, or Curate, is to chuse one, and the Parishioners the other; but where the Custom has been to chuse them all by the Parishioners, without the

By whom to be chosen.
Can. 89.

Rolls 2.287.f.
50.

*Side-Men, their
Office.
can. 90.*

the Minister, the Custom must be observed, notwithstanding the Canon.

There were other Officers called Side-Men, but they are almost laid aside, their Office is to assist the Church-Wardens in doing their Duties, and they were to take care that no body should loyter or talk in the Church-yard, or Church-porch, and to see that the Parishioners frequented the Church, &c.

*The Clerks Office.
Can. Jacobi.
91.*

The Clerk or Sexton is to be chosen by the Parson or Vicar, or in their absence by the Minister, who the Sunday after such Election, is by him that makes the Election to be declared, who is Elected.

*How to be
Elected.*

— The Party so Elected ought at least to be Twenty years of Age, of honest Life and Conversation, and one that can Write, Read, and Sing; his Office is to assist the Minister at Prayers, and to attend him, and to keep the Church and Seats clean, and has the keeping of the Keys of the Church to that purpose, and is to Ring to Prayer, and to do many other things, which by Custom belong to his Office to do.

*Cro. Car. 589.
Rolls 2. 286.
f. 42.*

But if such Parish Clerk have time out of mind been chosen by the Parishioners, he must be so still, notwithstanding the Canon.

And so much for Churches, I shall next proceed to Chappels.

Chap-

Chappels in Latine *Capella*, about which denomination I find great diversity of Opinions amongst the Learned, some conceiving it takes its name *a capiēdo Laicos*: others are of Opinion they took that name *a Capra*, because antiently they were covered with Goat Skins: others think they take their name *a cappa Sancti Martini*, because antiently the Kings of *France*, when they went to the Wars carried that Cap along with them, which was kept under a Tent, and thence called *Capella*: others have thought it is taken for a Chest, or repository, wherein the relicks of Saints were preserved; Amongst this variety of Opinions I shall beg the Readers pardon to put in my own amongst the rest, being not well satisfied with any of these. A Chappel is a Church in a smaller character, and therefore I imagine it might be called *Capella* from the littleness of its content, or capacity to receive persons, it differing nothing from a Church but in the dimension, or content, and that the Church is the elder Sister.

Of Chappels there are three sorts, Free Chappels, Chappels of Ease, and Private Chappels.

What those Chappels were that were called Free Chappels, I find likewise some difference of Opinions, for some have been of Opinion, that they were

Chappel unde dicitur.
Cowel
Minshiey
Spelman.
Hoc verbo

Ellas, in the end of a word signifying little, and cap. of capio to receive.

So a Chappel is of little receipt in respect of the Mother Church.

Division of Chappels.

Minshiey.
Cowel in free Chappels.

Chappels founded in Parish Churches, and endowed by the Founder, and made free to all People to come, and therefore called free Chappels; others were of Opinion, that they were Chappels built by the Kings of this Realm, or by their License, and exempted from the visitation of the Ordinary, others take them for donatives, and therefore called free Chappels, because they were freely given.

Stat. 1. E. 6.
cap. 14.

These free Chappels, whatsoever they were, were all given to the King in the first year of E. 6. except some few that are excepted in the Acts of Parliament by which they were given; or such as are founded by the King, or his License since the dissolution; for 'tis agreed on all hands, that the King may erect a free Chappel, and free it from the Jurisdiction of the Ordinary, or may License a Subject so to do.

Chappels of Ease, Parochial, and not Parochial, the difference.

Chappels of Ease, some of them have parochial Rights to Christen, and Bury, and are therefore called Parochial Chappels, by way of distinction from others that have no such privilege, and these differ in nothing from Churches, but in the want of Rectories, and Indowments, the Mother being to be served before the Daughter.

Those Chappels of Ease, which are not Parochial cannot Bury, or Christen, but

but are only used for the ease of the Parishioners to hear the word of God read and preacht, and to joyn in Prayer .

Chappels have like Officers for the most part as Churches have, distinguished only in name, and these Chappels must be Consecrated by the Bishop as Churches are, and the repairs must be made by Assessments on the Inhabitants and Landholders within the Chaplry in the same manner as for the repair of Churches, and are visitable by the Ordinary, and the like Appeals to the Ordinary for unequal Assessments; but all this must be intended of Antient Chappels, and where this course has been used; for if there be Land given for the repair of them, or any Land or Estate charged by prescription to the repairs of them, then the Custom must be observed.

But of new Chappels of ease there may be some question, whether the Ordinary can compel the Inhabitants to repair the same.

But when a number of People have for their ease joyned together, and erected a Chappel, and procured the Bishop to Consecrate it (which was the Original manner of erecting Churches) it should seem in Reason that the Bishop should have the same power to compel the repair, as he has to visit it.

Co. 5. 63. 64. a.
Co. 8. 127.

But I conceive there is no doubt but those of the Chappelry, or the Major part of them may agree to make an Assessment for the repair of such Chappel, and agree that the Collector for default of payment should distrain for it, and I conceive such By-Law for a publick good made by the greater number shall bind the rest.

*Who has the
Cure of Chap-
pels.*

The cure of Chappels of Ease in many places is to be performed by those that have the cure of Souls in the Parish; and in some places they are indowed with Land or Tithes, and in some places by voluntary contributions. * And Land or Tithes may be appendant to a Chappel.

* Raft. Entr.
*Trespass in
dismes. 4. and
in Præmunire
in Rom: 4.
Roll. 1. 110. a.
Co. 5. 72 b.
22 H. 6. 45. b.
Raft. Entr. 2. b.*

Whosoever by Law or custom is bound to provide Chaplains for any such Chappel, may be compelled to do it in the Ecclesiastical Courts, or an Action upon the Case lyes against him at Common Law to recover Damgages for not performing, but this must not be intended of a publick Chappel.

*Offerings at
Chappels.
Othobon cap.
Gratia quæ.*

The Offerings made at any Chappel are to be rendred to the Mother Church, but this must not be intended where by Custom time out of mind the Chaplain has had them, for there the Canon will not bind, nor does the Canon extend to Chappels
of

of late erection, unless they be with a *Salvo jure matricis Ecclesie tunc concessa*.

If the Patron of a Chappel presentative present to it by the name of a Church, and the Clerk by that presentment be instituted and inducted, it hath lost the name of a Chappel, and gained the name of a Church; *Quare*, what other alteration is made thereby.

Publick Chappels annexed to Parish Churches are (as hath been said) to be repaired by the Parishioners as the Church is, but not if any other person be bound by custom to repair them.

And Note, That a *Quare Impedit* will lye of a Chappel.

In what Cases the Inhabitants of a Chappelry shall be freed from the repair of the Mother Church, see before in this Chapter.

Private Chappels are such as Noble Men, and other Religious and worthy Persons have at their own private charge, built in or near their own Houses, for them and their Families to perform Religious Duties in; these private Chappels, and their Ornaments are maintained at those Noble and Worthy persons charge, to whom they belong; and Chaplains provided for them by themselves, with Honourable

How a Chappel may become a Church.

47 E. 3. 4. b. 2.

5. a. 2.

2 Inst. 364.

Chappels annexed to Churches, how to be repaired.

2 Inst. 489.

Quare Imp. will lye of a Chappel.

2 Inst. 363.

F. N. B. 33. E.

Private Chappels.

Pensions, and these antiently were all Consecrated by the Bishop of the Diocess, and ought still to be so, but I doubt many have been neglected of late time.

Church-yard,
cyc.

2 Inst. 489.

Chap. Quam-
vis lex natu-
ra.
2 Inst. 489.

The last thing I have to speak of relating to Churches, is the Church-yard, in Latine *Cæmeterium*, from the Greek, *Quasi dormitorium, quia mortui dicuntur dormire usq; ad resurrectionem*. It is the ground wherein the Church is erected, the freehold thereof is in the Parson; so that the Trees, Grass, &c. growing in it are his; but he may not cut down the Trees, but in especial Cases, as has been shewed elsewhere. The Fences are to be repaired at the charge of the Parishioners, or in such manner as by Custom has been used; and the Visitors in their Visitations are to inspect the repairs, and to compel the reparations, if need require; It is Consecrated Ground, and participates of all the Priviledges belonging to the Church beforementioned, and the Parishioners may here freely bury their Dead without contradiction, or paying any thing for breaking the Soyl, it is not to be put to any profane use, to have Swine kept in it, or muck heaps laid in it, but kept decently, as a place dedicated to Gods Service.

C H A P. XIII.

The Thirteenth Chapter treats of Parsonages, Vicarages, Sine Cura's and Donatives, and of the Indowments of Vicarages, and how a Parsonage and Vicarage may be re-united, and many other things relating to Parsonages, Vicarages, and Sine Cura's.

A Parsonage or Rectory is a certain portion of Land, Tithes, and Offerings established by the Laws of this Kingdom for the maintenance of the Minister that hath the Cure of Souls within the Parish where he is Rector, or Patron, and properly comprehends, *integra Ecclesia parochialis, cum omnibus suis juribus, prediis, decimis, aliisque proventuum speciebus: alias vulgo dictum beneficium.* And sometimes it is taken *pro mansione, seu domicilio Rectoris.*

A Parsonage or Rectory, quid

Spelmans
Gloss.
verbo Rector.
12.

And though properly a Rectory or Parsonage doth consist of Glebe Land and Tithes, with the Offerings; yet it may be a Rectory, though it have no Glebe but the Church and Church-yard, and in some places, as in London, and

15 H.7.8.a.
21 H.7.21.b.
Edgar versus
Sorrel m.5.
Car. B R.

ibid.

Cap. Quoniam
autem verbo
3. q. marca-
rum.

Indowments
before and
within memo-
ry.

other great Towns and Cities there may neither be Glebe nor Tithes but Annual payments and Offerings in lieu thereof, and by the grant of a Rectory all the Glebe Tithes and Offerings will pass.

A Vicarage is a Cantel or Portion of the Rectory set out by the Patron, Parson, and Ordinary, for the maintenance of a perpetual Vicar, who as Vice-gent of the Parson hath the Cure of the Souls within the Parish where he is Vicar; but a Vicarage may consist of Land or Tithes alone, or of Glebe, Tithe, and Offerings, or in an annual pension without Glebe or Tithes, and such Pensions have been limited by several Canons, first to five Marks, after it was extended to six Marks, and lastly to eight. But generally Vicarages are indowed with Glebe and Tithes.

Of Indowments some are beyond all time of memory, that is, so long ago that it is not known in what time or Age the same was made, and in such case it shall be presumed, that the Vicar was Indowed with such share of the Rectory, Tithes, and Offerings, as the Vicar and his predecessors have enjoyed by all the time of the memory of any Man.

But if the Indowment it self be extant, then the Vicar must be content with such part of the Rectory as he is thereby indowed with, &c.

But

But if these Indowments be antient, *How to be expounded.* they shall be expounded according to the usage since.

And therefore if a Vicar were antiently in the time of *H. 3.* or before indowed *de decimis garbarum* arising in such a Village, Hamlet or place, and have by colour of this Indowment, as long as any body can remember, had the Tithe Hay, as well as Tithe Corn, of the same Villages, Hamlets and places, it shall be presumed that in those days Hay past by that name. *Rolls 2. 335. 7.*

So if a Vicar were antiently indowed *De minutis decimis*, and have by colour of this Indowment by all the time of memory had the Tithe of some small parcel of Wood; although Tithe of Wood in its own nature be accompted a great Tithe, yet the Vicar shall enjoy the Tithe of this Wood by reason of the usage. *Rolls 2. 335. 8.*

If a Vicarage were antiently indowed, *de Alteragio*, which properly signifies the Offerings at the Altar; yet if the Vicar by colour of this Indowment by all the time of memory have enjoyed the small Tithes, he shall have them still. *Hetley 70. 135.*

If a Vicar be indowed of all the Tithes arising in the Parish (except Corn) and certain Fields, or Grounds in the Parish, have time out of mind been *Rolls 2. 234. 7. 335. 4.*

sown with Corn, till of late they have been planted with Hops, or sown with Saffron, Woad, Rape, &c. the Vicar shall have the Tithe, and not the Parson.

Rolls 2.335.

2. and 3.

Cro. Eliz.

578.

More 457.

Herley 135.

Winch. 70.

And if the Vicar be indowed of all the white Tithes, or small Tithes arising, renewing, &c. within the Parish, he shall not by this indowment have the small Tithes arising upon the Glebe Lands of the Rectory, though they should afterwards be severed from the Rectory.

Vicar shall not pay Tithes of the Glebe.

Cromptons

Case.

P. 7. Car. 1. B. R.

Matter upon indowment.

Rolls 2.335.5.

And it hath been resolved that upon a general indowment of a Vicarage, the Vicar shall not pay the Tithes of his Glebe Land to the Parson.

If the Vicar be indowed of all the small Tithes, and after Lands that have been sown with Corn, or mowed for Hay time out of mind, whereof the Parson hath had the Tithe, and these Lands are since converted to Hopyards, or sown with Saffron, Woad, Rape, &c. the Vicar shall have the Tithes, and not the Parson; for the indowment goes not to the Lands, but to the Tithes.

Rolls 2.335.6.

If a Vicar be indowed of all the Tithes arising upon a Mannor, he shall by such indowment have not only the Tithes of the Demefn, and Tenements, but also of the Freeholders Lands within the Mannor,

The

The Parsonage of *Luffenham* in *Lieccestershire* the 22 of E. 4. was appropriated to the Abby of *Sally*, upon condition that a Vicarage should be indowed: a Vicar from time to time ever since was presented and paid first-fruits, but no indowment now extant, it shall now be intended that it was indowed.

The indowments of Vicarages have been always favoured at Law, the Vicars for the most part having the Cure of Souls.

Indowments of Vicarages were for *Upon what oc-*
the most part made upon the appropri- *caſion Vicara-*
ting of Churches to Religious Hou- *ges were in-*
ses, &c. and upon the appropriation *dowed.*
they did usually assign some small por-
tion of the Rectory to maintain a
perpetual Vicar to serve the Cure, and
took the rest of the Rectory to the
use of Abbeys, &c. But in process of
time the Abbots, &c. grew better Hus-
bands, and took the whole Rectories
to themselves, without indowing of
any Vicar, and served the cures by
their own Monks and Fryers, by which
means Hospitality was neglected, the
Churches and Rectory Houses dilapi-
dated, the Minister often wanting, where-
upon the Statute of 15 R. 2. and 4 H. 4. 15 R. 2. cap. 6.
were made, for the making void such Ap- 4 H. 4. cap. 18.
propriations as were made without com-
petent

Bretton vers
Ward.
M.17.Jac.B.R.

Sine Cura's
how introdu-
ced.

How an Im-
propriation
may be resto-
red.

17 E.3.51. b.
11 H.6.18. b.
39 E.3.33. a.
1 E.2. *Quare*
Imp. 178.
Rolls 2.336.
E.5.

14 E.3.cap.16.
Freehold of the
Vicarage, in
whom.

6 E.3.50. a.
3 E.3.17. b.
2 E.3.8. b.

petent indowment of Vicarages, and likewise against the appropriating of Vicarages; but Vicarages indowed before those Statutes, might notwithstanding those Statutes have been appropriated.

But though for the most part Vicarages were indowed upon appropriations; yet sometimes the Parsons, Patrons and Ordinaries, did indow Vicarages without any appropriation of the Parsonage: and if the Vicar were charged upon such indowment with the cure, as for the most part they were, then the Parsonage became a *Sine Cura*, of which more hereafter.

The Parson or Appropriator is Patron of the Vicarage of common right, yet nevertheless a Lay Man might have been Patron of a Vicarage as well as the Parson, and so might the King, and the Adowson of a Vicarage may be appendant to a Mannor by prescription, and it shall be intended it was granted by the Parson before the time of memory.

It should seem, that at the Common Law before the Statute of 14 E.3. the Freehold of the Vicarage remained in the Parson, and that the *Præcipe* was to be brought against the Parson, and before that Statute the Vicar could not have had a *Juris utrum*, and he shall still have aid of the Patron, Parson, and Ordinary.
And

And as the Vicarage was part, and taken out of the Parsonage; so it may be again re-united.

For if the Profits of the Parsonage, or Vicarage, fall into such decay, that either of them by it self is not sufficient to maintain a Parson, and Vicar, they ought again to be re-united.

And the Parson and Ordinary, in the time of the vacation of the Vicarage, may re-unite the Vicarage to the Parsonage.

And if a Vicarage so fall into decay, that the same is not sufficient, competently to maintain a Vicar, the Bishop may judicially compel the Parson to enlarge the Vicarage.

It hath been resolved that where there is a Parsonage and Vicarage indowed, that the Bishop in the vacation may dissolve the Vicarage: but if the Parsonage be impropriated, the Bishop cannot dissolve the Vicarage, for upon a dissolution the cure must revert, which it cannot into lay hands, for where there is a Parsonage, and Vicarage, they both have the cure, the Parson *habitualiter*, the Vicar *actualiter*, per Noy.

If an Impropiator, or Appropriator, Patron of a Vicarage, by agreement between him and the Ordinary presents to the Parsonage, by this they are re-united, and it should seem that a bare pre-

How a Vicarage may be re-united.

31 H. 6. 14. a.
40 E. 3. 28. b.

Rolls 2. 337.
h. 1.

Where a Vicarage may be enlarged, and how.

Rolls 2. 337.
h. 2.

How a Vicarage may be dissolved.

Parry versus Bancks 12.
Jac. Scac.

How the Rectory and Vicarage may be re-united.

44 Aff. p. 37.
2 H. 6. 33.

11 H. 6. 18. b. presentation, without any agreement at all, disappropriates the Parsonage, and reunites the Vicarage.

Charge falls on the Vicar, Parson is to free it.

If any charge fall upon the Vicarage, it ought to be repaired by the Parson.

31 H. 6. 14. a.

And so much of Parsonages and Vicarages.

A Donative, quid.

More 765.

Cro. Jac. 63.

Yelverton 60.

A Donative is a Spiritual preferment in the Church, be it Church, Chappel, or Vicarage, which is in the free gift or collation of the Patron without making any presentation to the Bishop: neither needeth such Clergy Man have any Admission, Institution, or Induction, by any mandate from the Bishop, or others; but may by the Patron, or by any other authorized by the Patron, be put into possession; and such Incumbent is free from the visitation of the Bishop, or any other, than his Patron or his Commissioners, and by consequence freed from procurations.

1 Inst. 334. a.

* 8 Aff. p. 29.

A Parish

Church may be a Donative.

* And if the Bishop should take upon him to visit a Donative, and deprive the Incumbent, he runs himself into the danger of a *premunire*.

Rolls 2. R. 1.

1 Inst. 344. a.

6 H. 7. 14. a.

contra Keble.

* Yelverton

61. F. N. B. 35.

e. f. 1 Inst. 344.

a.

And note, that a Parish Church may be a Donative, and have Cure of Souls: and such Donatives cannot lapse, unless by special Agreement at the Foundation, but the Ordinary may compel the Patron to collate; *but the Patron cannot collate

collate a Lay Man, as some have thought, but a Spiritual person in holy Orders; but if the Patron once present to a Donative, and the Clerk upon such presentation be admitted, instituted, and inducted, it is thereby for ever after become presentative, and shall be no longer esteemed, or used, as a Donative: but if a stranger that has no right presents to a Donative, though his Clerk be admitted, instituted, and inducted; yet that shall not alter the nature of the Living.

If the King found a Church, and exempt it from the visitation of the Ordinary, it is a Donative, and the King shall visit by his Chancellor.

So it is, if the King found a Church, or Chappel, without any special words.

And the King may give Licence to a Subject to erect or found a Church or Chappel Donative, and exempt it from the Ordinaries visitation, and the Patron may in such case visit by his own Commissioners.

And a *Quare Impedit* may be brought of a Donative, *quod permittat ipsum presentare ad Ecclesiam*; but the declaration in such case must be special.

And Donatives are within the Statute against Symony, and where they have cure of Souls, they are likewise within the Statute against pluralities.

Cro. Jac. 63.

How a Donative may be made presentative.

1 Inst. 344. a.

F. N. B. 35. e.

1 Inst. 344. a.

The King may Found a Donative, or Licence a Subject to do it.

1 Inst. 334. a.

Ibid.

A Quare Impedit of a Donative.

1 Inst. 344. a.

Yelverton 61.

F. N. B. 35. e. f.

Donatives within the Statute of Symony, and pluralities.

There

Sine Cura's
quid.

Living's In-
compatible.
Quere.

There is another sort of Church Livings that are commonly called *Sine Cura's*, these are such Parsonages as have Vicars indowed with Cure of Souls, as has been said : but these are not within the Statute of Pluralities, nor are these Livings said to be incompatible ; for those Livings are only said to be incompatible, that have Cure of Souls ; and therefore I conceive there needs no dispensation, or faculty, for the taking one of these *Sine Cura's*, though the party had another Living before with Cure of Souls ; but herein the party is best to be advised by some learned Canonist, but by the Statute there needs no dispensation.

And so much for Parsonages, Vicarages, Donatives, and *Sine Cura's*, : and for other Church preferments, I shall refer the Reader to Mr. *Hughes* learned Treatise of the Parsons Law, they being above my undertaking.

C H A P.

C H A P. XIV.

The Fourteenth Chapter shews, what Resignations and Permutations are, and in what manner they may be made, and other matters relating to them.

A Resignation is where a Parson, Vicar, or other beneficed Clergy Man, voluntarily gives up, and surrenders his charge and preferment to those from whom he received the same, which may be absolutely, or upon condition.

A Resignation must regularly be made to the next immediate Ordinary, and not to the Superior.

A Resignation may be made by or to a Proctor, but a Church is not void by any such Resignation in absence, till the same be presented, and accepted by the Ordinary: or a Resignation may be made in the presence of a publick notary in the absence of the Bishop, and after it is presented and accepted, it is as good as though the Bishop had been present.

And though regularly Resignations ought to be made to the Bishop from whom the Clerk upon his admission receives

Resignation
quid.

To whom.
Dyer 294. b.

To or by a
Proctor.
Noy. 147.

Gaytons Case.
P 34. Eliz. c.
B

Resignation
may be to the
King.

Dyer 294. p.
56. plo. 494.
a.

ceives his charge and cure, yet a resignation to the King as supreme Ordinary hath been held good.

Words of Resignation.

Dyer 294.p.
56.

To whom a Donative is to be resigned.

Cro. Jac. 63.

Yelverton 60.
1 Inst. 344.a.

Cro. Jac. 53.

Yelverton 60.

Resignation in presence of a publick notary. Semble resolution.

P.3.Eliz.20.

343. C.B.

The usual words of a Resignation are, *rennuntiare, cedere, remittere, & resignare.*

Donatives must be resigned to the Patron, and not to the Ordinary; for the Clerk in that Case received his Living immediately from the Patron.

And if there be two Patrons of a Donative, and the Incumbent resign to one of them, it is good for the whole.

In the Case of one *Gayton, P. 34. Eliz.* in the Common Pleas, in a *Quare Impedit* for the Church of *Little Cressingham* in Norfolk, a Parson resigned his Benefice in the presence of a publick Notary, *sponsite, pure, & simpliciter*, to the use of two upon condition, *quod si aliqui eorum non admisi fuer. & realem possessionem Ecclesia predicta adipisci non valeant infra sex menses, quod tunc &c.*

And in this Case it was very much disputed, whether a Resignation could be upon condition; but at last with advisement with the Civilians it was resolved, that a Resignation might be upon condition.

Permutations quid.

Permutations, or Exchanges, are where two Clergy Men agree to exchange their Livings, and after they made such agreement, and put it in Writing, they make mutual

mutual resignations upon condition in the form following,

Regist. 306.
b.

*A Resignation
upon a permuta-
tion.*

In Dei nomine Amen. Ego H. de W. Rector Ecclesie de N. Lincoln. Diocesi. volens ipsam Ecclesiam meam cum Ecclesia de P. dictae Dioc. cujus Rector existit dominus de W. certis justis, & legitimis de causis sine dolo & fraude canonice permutare, ipsam Ecclesiam meam ex causa permutationis hujusmodi & non alio modo; in sacras manus venerabilis in Christo patris Domini T. Dei gratia Lincoln. Episcopi resigno, supplicans humiliter & devote, ut H. de hujusmodi causa permutationis ipsam resignationem sic factam & non aliter velitis admittere, & negotium permutationis hujusmodi quatenus ad vos attinet fideliter expedire. Et protestor expresse in his scriptis, quod si dicta permutatio debitum non sortiatur effectum, quod hujusmodi mea resignatio praedicta pro nullo penitus habeatur.

To which is added an Instrument containing a protestation in the form following.

In Dei nomine Amen. Ego H. de W. nunc Rector Ecclesie de P. Lincoln. Diocesi. & prius Rector Ecclesie de N. dictae Diocesi. protestor, dico & allego in his scriptis, quod si contingat quod hujusmodi Ecclesia mea de P. absq; dolo & culpa meis in hac parte

The protestation.

P

a me

à me aliquoaliter evincatur, volo & intendo ad dictam Ecclesiam de N. absq, aliqua difficultate libere & licite redire, & eam rehabere juxta Canonicas sanctiones, & protestor insuper quod non intendo nec volo ab hujusmodi protestatione seu effectu ejusdem recedere aliquoaliter in futuro, sed eidem protestationi & contentis in eadem, volo & intendo in futuris temporibus firmiter adherere, juris beneficio in omnibus semper salvo, &c.

What the effect of this protestation is, I must leave to the Civilians to determine, however the intent of the thing agrees well enough with the reason of the Common Law; for at the Common Law if a Man exchange Lands, and the Lands he receives in exchange be evicted, he may repair to his own Lands, and re-enter upon them.

13 E. 4. 3. b.
Co. 4. 12. b.

*Permutation
vid, quia one
dyed before
induction.*

45 E. 3. F.
exchange 10.
C. 2. 74. b.
Perkins Title
exchange.

And it has been resolved, that where two Parsons of two several Churches by an Instrument in Writing agreed to permute their Churches by way of exchange, and severally resigned them into the hands of the Ordinary to that intent, and the several Patrons presented according to the intent of the exchange, and the one Parson was admitted, instituted, and inducted, and the other was admitted and instituted, but dyed before induction, that though the induction of the other was absolute, yet this was so directed

by the precedent agreement, which was by way of exchange, which ought to be executed on both parts in the life of the parties, and the induction could not be made upon condition; therefore for this reason it was all resolved to be void.

And so much for Resignations and Permutations, with which I will end this first part of my discourse.

Gloria Deo omni potenti.
Amen.

F I N I S.

to the same extent, which was
 not only a disadvantage, but
 on each of both parts in the life of
 the people, and the condition could not
 be improved upon conditions therefore the
 reason it was all resolved to be
 with.

And to much for negotiations and
 transactions which I will end this
 chapter in my dissent.

And thus I have now
 finished.

FINIS

THE
Second Part:
BEING THE
L A W
OF
TITHES OR TITHING.

Shewing in what manner all manner of
Tithes, Offerings, Mortuaries, and all other
Church Duties are to be paid, and in what
Courts and manner they may be recovered,
and to what charges they are Subject;

With many other things fit for all People, but
especially all Clérgy-men, to know.

Written by Sir *SYMON DEGGE* Kt.

L O N D O N,

Printed *Anno Domini* MDCLXXVII.

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To his Worthy and
 Reverend Son in Law
 Mr. *Anthony Trollop*,
 Rector of *Norbury* in
Derbyshire.

Dear Son,



I is now above thirty
 years, since the Tithing
 Table published many
 years ago came to my hand; and
 upon perusal thereof finding that
 the Common Laws and Canon-
 Laws differed in many things, I
 thought it would be a work grate-
 ful to the Clergy, and useful to o-
 thers, to publish something in or-
 der to the reconciling of them:
 To which end I had gathered toge-
 ther some materials; but the War
 coming immediately on, and after
 that the Ecclesiastical Courts be-
 ing laid aside, and other Courses
 found out for the recovery of
 P 4 Tithes,

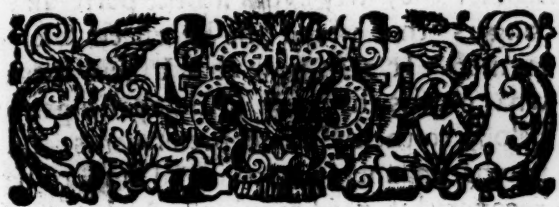
The Epistle, &c.

Tithes, I desisted the further Prosecution of that design, until it was revived at your Request, seconded by some other Reverend Divines; whereupon looking up my old Notes, and adding such Judgments and Resolutions, that I have since come to the knowledge of, the whole is reduced to the form I here present it to you; you have most Right to it, and I heartily wish it may be of as great Service and advantage to you, and all the Reverend Clergy, as is desired by him that is

Your affectionate

loving Father

S. D.



THE
LAW
OF
TITHES or TITHING.

CHAP. I.

*The first Chapter shews, what
Tithes are, the several sorts and
kinds thereof, and in what man-
ner due.*



Having in the former part of
this discourse shewed the
worthy & Reverend Cler-
gy-Men in what manner
they may lawfully and
justifiably attain to such preferments in the
Church as they are capable of, & in what
manner

The Parsons Counsellor: Part II.

manner they may avoid all the perils and dangers that attend the Beneficed Clergy-men. It rests now that I shew them what profits they may justly challenge to belong to their Church-preferments, and in what manner to be paid, and how to be recovered if need require. And first of Tithes, which the Canonists define to be.

Definition.

A tenth part or portion of increase commanded to be paid to the Sons of Levi for their Ministry, wherein they served in the Tabernacle.

Or, as some others define them, they are

Omnium bonorum licite questorum quotta pars Deo Divina institutione debita.

But the Common Lawyers define them to be.

Co. II. 13. b.

An Ecclesiastical Inheritance Collateral to the Estate of the Land, and of their own proper Nature due only to an Ecclesiastical Person by the Ecclesiastical Laws.

And for that reason no unity of possession can extinct or suspend them; but they, notwithstanding such unity, remain in esse, and may be demised or granted notwithstanding any such unity: but may more properly in my judgment be defined to be

A tenth part, or some other thing in lieu thereof, of all the Increase yearly arising forth of the profits of the Lands and Stock,

Stock, or raised by the industry of the Parishioner, and properly due to the Clergy that have the Cure of the Souls in the Parish where they arise.

And by some Canonists Tithes have been divided only into two kinds, that is, Predial and Personal: and in this manner of division they comprehend all manner of Tithes, that arise either immediately or mediately from the Land, under the name of Predial Tithes: which they again distinguish into Predial mediate and immediate; under which they comprehend the Tithes of Corn Hay Wood Herbs and all other things, that either come from the ground by manurance, or of its own Nature; and under the name of Tithes Predial mediate is comprehended the Tithes of all manner of Cattel and other things that receive their nourishment from the ground,

Division.

*Doct. & Stud.
l. 2. c. 55.
p. 168. b.
Lindwood c.
Quoniam propter
verbis dividend. est decima.*

But Tithes by the Common Lawyers (and which division I shall observe in my discourse) are divided into Predial, Mixt and Personal: and according to this division all Tithes that arise from the ground, as before is said, immediately, are only accounted to be Predial: and those that arise from Cattel and other things, that receive their nourishment immediately from the ground, they call Mixt; and those that arise from the Labour and industry of Man alone, Personal.

*2 Inst. 649.
Roll. 1. 635. a*

*Lindwood c.
Quoniam propter
verbis talibus
decimis.*

Tithes

Tithes again both by the Common Lawyers and Canonists are divided into great Tithes, in Latine *maiores seu grosse decimæ*; and into small Tithes, in Latine *minores* or *minute decimæ*. And in this division Corn Hay and Wood are all accounted gross or great Tithes. But there has been some question whether Tithe Wood should be accounted a great or minute Tithe, and resolved, that if a Vicar be only indowed with the small Tithes, and have by reason thereof always had Tithe Wood, that in such Case it shall be accounted a small Tithe, otherwise it is to be accounted amongst the great Tithes,

Rolls 1. 643.
v.2.
2 Bulst. 27.

Cro. El. 467.
Hutton 77.
Cro. Car. 28.
Rolls 1. 643.
v.3.

But all manner of Tithes of Gardens Herbs Roots Fruit Saffron Wood, whether sowed in Fields or Gardens, Flax Hemp Hops Rape, and all other Predial Personal and Mixt Tithes are accounted *inter minutas decimas*; but in *Udal's* and *Tyndal's* Case *Hutton 77.* in some Cases Hops Wood, &c. may be great Tithes in places where they are much sowed.

Lindwood c.
*Quoniam prop-
ter verb. tali-
bus decimis*

And herein the Custom of England is kind to the poor Vicars, making many things to be allowed for Minute Tithes that are not so in others.

I have been the longer in this division of Tithes between great Tithes and small Tithes, because many Vicarages are indowed with the small Tithes only, and
in

in some old indowments you will find the word *Alteragium*, which by Custom may as well comprehend the small Tithes, as such profits as arise from the Altar.

Now perhaps it may be expected, I should say something to satisfy the Reader by what Law Tithes became due under the Gospel. But in that point I find so great a difference between the Canonist, School-men and Divines, that it would be a great presumption in me to take upon me to determine the point, the rather because I am informed by a reverend learned and grave Divine, that the learned *Selden* retracted his opinion therein; and what it was, you may see in the places noted in the Margent: But so far as I have observed, they all agree in this, That Tithes *quoad sustentationem Cleri vel ministrorum Dei* are *jure divino*; So that the sole question amongst all these learned men is about the quantity, or *quota pars*. But be they due *jure divino*, *jure Ecclesiastico*, or *jure humano*, I conceive the difference cannot be great, since, as it must necessarily be confessed, they have been given and consecrated *Deo & sanctæ Ecclesiæ*; and so being dedicated to God and his Service (in my poor Judgment) the taking them away from the proper use and end cannot be less sacrilegious, than if they were without dispute *jure divino*, I shall not therefore stuff this present

Discourse

Spelm. Gloss.
28 Cro. El.
578.
Hatley 135.

*Quo Jure de-
bit.*

Helvins Hist.
of Presbytery:
391.
Seld. Hist. de-
cim. cap. 5.
Sect. 4. cap. 7.
And in the end
of the Epistle
to the Reader.

The Question.

Dost. & Stud.
l. 2. cap. 55. f.
164. b.
165. a.

Discourse with the Arguments of any side; but shall leave the learned to their own conceits, it serving my purpose that they be due by any Law, divine, humane, or Ecclesiastical. My next examination shall be to whom they are due.

CHAP. II.

The second Chapter shews to whom Tithes are due, and by whom to be paid.

*To whom
Tithes are due
to be paid.*

HAVING shewed in the former Chapter what Tithes are, and the several kinds thereof, I shall in the next place shew to whom the same are due to be paid.

Seldens hist.
decim. 178,
&c.
Tho. Aq. Sum.
2o. 2a. q. 88.
art. 3. conclusi-
one.

That there were Infeudations of Tithes, before the parochial Rights were settled, is without dispute both here in England and in other Christian Kingdoms and Common-wealths: in which particular the curious may satisfy themselves in Mr. *Selden's* History of Tithes and other Authors. And it is more clear, that before the time that the parochial Rights of Tithes were settled, that the Owners of Lands might grant their Tithes to any Ecclesiastical or Religious

Religious persons (a multitude of Precedents whereof the Reader for his satisfaction may find in the *Monasticon Anglicanum* of Mr. Dugdale): so that by this means the whole Tithes of some Parishes, and divers great portions out of other Parishes, were granted to Abbots, Priors, &c. And some to the Parsons and Rectors of other Parishes; which is the reason, that at this day there is several portions of Tithes held from the Parish Churches by Impropiators and the Rectors of other Parish Churches.

When the parochial Right of Tithes was first settled, there hath been (as should seem) a vulgar Error: for 'tis frequently said in our Common Law Books, that before the general Council of *Lateran*, which was held 1179. That every one was at liberty to give his Tithes to what Spiritual Ecclesiastical or Religious Person he pleased; but that by that Council the parochial Right of them was settled. Neither was this an Error of the Common Lawyers only; for Mr. *Lindwood* a learned Doctor of the Civil and Canon Laws, that lived in the time of H. 5. about two hundred and fifty years ago, tells us, that

When the Parochial Right of Tithes first begun.

10 H. 7. 18. a.
43 E. 3. 5.
Doct. & Stud.
1. 2. cap. 55.
Co. 2. 44. b.
Dyer 84. &c.

Bene potuerunt Laici decimas in feudum retinere, & eas alteri Ecclesie dare ante concilium Latarenense, non tamen post, &c.

Lindwood c. locat. & conduct. verb. portion.

But

The Parsons Counsellor: Part II.

But there is no Canon in that Council to be found, whereby the parochial right of Tithes was settled, nor was the parochial Right of Tithes settled till the year 1200; and then not by any Canon, but by a decretal Epistle of Pope Innocent the third, a Brief of which Epistle here follows, as I find it in Mr. Seldens History of Tithes, and in Sir Edwards Cooks Institutes.

Selden hist.
Decim. 231.
2 Inst. 641.

Innocent. 3.
Epist. decret.
l. 2. p. 452.
Edit. colen.
Seld. Hist.
of Tithes 231.

Pervenit ad audientiam nostram, quod multi in Diocesi tua Decimas suas integras vel duas partes ipsarum non illis Ecclesiis, in quarum Parochiis habitant, vel ubi predia habent, & à quibus Ecclesiastica percipiunt Sacramenta, persolvunt; sed eas aliis pro sua distribuunt voluntate: Cum igitur inconveniens esse videatur & a ratione dissimile, ut Ecclesia, quæ Spiritualia seminant, metere non debeant a suis Parochianis temporalia, & habere, Fraternitati tuæ (being directed to the Archbishop of Canterbury) auctoritate presentium indulgemus, ut liceat tibi super hoc, non obstante contradictione vel appellatione cujuslibet seu consuetudine hactenus observata, quod canonicum fuerit ordinare, & facere quod statueris per Censuram Ecclesiasticam firmiter observari: Nulli ergo, &c. Confirmationis, &c. Datum Lateran. 2 Nonas Julii.

I must acknowledg I give the Reader this a little imperfect for want of the Original,

original: and it was Sir *Edward Cooks* Case also; for I perceive he borrowed his from Mr. *Selden*.

But some have fancied (and perhaps not without reason; for this seems not to be a general Decree, but a particular Instruction to the Archbishop of *Canterbury*) that the parochial Right of Tithes was not generally settled of long after, that is, by a Canon made in the Council of *Lyons*, which was in the year of our Lord 1274. in which Council there is a Canon for the settling the parochial Right of Tithes. But whether that were the Original, or a Confirmation of some other Decree or Council, I dare not take upon me to judge: but certain it is, that about this Century the parochial Right of Tithes was settled in general. But though this decretal Epistle of Pope *Innocent* the third be not general, yet it was Obligatory as to the Province of *Canterbury*; so that in that Province the parochial Right of Tithes may take its date from the time of that decretal Epistle, which was, as above is said, in the year 1200.

But after the Parochial Right of Tithes was settled, it is clear, that no Lay-man was capable of Tithes in pernaney but in particular Cases, till the Statutes, by which the Monasteries and religious Houses were dissolved, enabled them; But in some special Cases Lay-men were capable of

Q

Tithes

*Selden. hist.
decim. 398.
and in his Re-
view 478. 5*

Co. 2. 44 a.

Lay men capable of Tithes in Pernancy.

Co. 2. 45. a.

Tithes in pernancy, as in the Case of *Pigot* and *Heron* cited in the Bishop of *Winchester's* Case; where the Case is put, that the Lord of a Mannor, and all those whose Estate he had in the Mannor time out of mind, had paid to the Parson of D. (in which Parish the Mannor lay) for the time being a certain sum for the maintenance of Divine Service in contentation of all Tithes arising within the said Mannor, and that in consideration thereof he, and all those whose Estates he had in the said Mannor by the time aforesaid, had and enjoyed all the Tithes arising in the said Mannor: and in this Case it was adjudged, that the Lord of the Mannor might have these Tithes in pernancy, and sue for the same in the Spiritual Court, but a man cannot claim Tithes generally as part of, or belonging to, a Mannor.

Lay-men capable of Tithes in Pernancy by the Statutes of the dissolution of Abbeyes.

All Tithes belong to the Rector prima facie. Portions by Prescription.

But since the several Statutes made for the dissolution of Monasteries, those Tithes which were appropriated to the religious houses so dissolved are become Lay-Fee, and any Lay-men by the Laws of this Realm are capable of them in pernancy, and may sue for the same in the Spiritual Courts.

But since the parochial Right of Tithes was settled *prima facie*, All Tithes not appropriated belong to the Rector of the Parish Church wherein they arise; yet notwithstanding the Parson of one Parish may

may prescribe to have a Portion of Tithes in the Parish of another ; and so might Abbots, Priors, and other religious persons prescribe to have portions of Tithes in Parishes, whereof they had not the Advousons ; and by consequence the Patentees from the Crown, and the Impropriators may claim the same by prescriptions in the Abbots, Priors, &c. and the usage since the dissolution will serve to prove the prescription and usage in the Abbots, &c. that they held the same so time out of mind.

14 H. 4. 17. a.
44 Aff. p. 25.
Roll i. 657. o.

How Prescriptions are to be proved
Seld. hist. decim. 364.
290.

As for extra-parochial Tithes, there has been some differing Opinions. Sir William Herle was of opinion, that they belonged to the Bishop of the Diocess, as general Parson of his whole Diocess, grounding his opinion, as it should seem, upon the Canon Law : But there was never any such Canon received or approved in this Kingdom.

Extra-parochial Tithes.
7 E. 3.

Seld. hist. decim. 108.

But it hath been resolved both in Parliament, and by several Judgments at Common Law, that all extra-parochial Tithes belong to the King, who is a mixt Person, and capable of Tithes at the Common Law in pernancy.

21 Aff 75.
2 Inst. 647.
Roll i. 657.
o. p. Seld. hist. decim. 365.

Now having shewed in general who are capable of Tithes in pernancy at this day, and to whom of Common right they belong, I shall proceed to shew to whom they are due in some particular Cases.

In particular Cases to whom Tithes are due

Q 2

If

Cro El. 161.

*Against the
Parsons own
Lease.*

Portman verſ.

Hind. M. 31, &

32 El. B. R.

Co. 11. 13. b.

Dyer 43. p.

22 *est Quere.*

If a Parson Lease his Glebe-Lands, and do not also grant the Tithes thereof, the Tenant shall pay the Parson Tithes: nay though the Parson Lease his Lands *cum omnibus proficuis & commoditatibus eidem spectantibus*, rendring Rent *pro omnibus exactionibus & demandis quibuscunq*; Yet notwithstanding the Tenant shall pay the Parson the Tithes arising upon these Lands.

The like Law it is, if an Impropriator, Vicar, &c. make such Lease, &c.

*Against his
Feoffment.*

Co. 1. 111. a.

Co. 11. 13. b.

And as the Parson shall have Tithe of his own Tenant, so he shall have of his Feoffee. And if a Parson have Lands in the same Parish whereof he is Parson, and demises his Tithes, he shall pay Tithes to his Farmer.

Dyer 43. p.

21. Moyle ver.

Ewre.

Hill. 11. Jac. B.

R.

Roll, Lease.

655. k. 1.

If a Parson sow his ground, and then sell the emblements (I mean the Corn growing upon the ground) the buyer of the Corn shall pay the Tithe of it to the Parson that sowed and sold the Corn.

So if a Parson sow his Glebe-Land, and then Lease the Land, the Tenant shall pay his Parson Landlord Tithe of this Corn.

Co. 10. 88. b.

21 H. 6. 30. a.

There has been some opinions, that if the Parishioner sow his Lands, and before severance the Parson die, that in this case the Parsons Executors, and not his Successor, should have the Tithes.

Uphaven ver.

Humfries 40.

El. per Poph.

& Gaudy

verſ. Fenner.

And there has been some Opinions, that if the Parson sow his Glebe, and die before

fore severance, that his Executors should not pay Tithes of this Corn.

But both these Cases, if they had been Law, are put out of doubt by the Stat. of 28 H. 8. which hath given all the Tithes and other profits belonging to the Rectory to the Successor from the death of the last Incumbent, which hath taken away all pretence the Executors could have in such Cases. But notwithstanding this Statute, I take the Law to be clear, that the Executor of the Parson shall have the Corn sown by his Testator in his life time, as the Executors of other Tenants for life have by the Law.

And so it is settled by the Statute of 28 H. 8. before mentioned; But if the Parson Vicar, &c. sow the Land and be deprived, resign or accept another Living, the Successor shall have the Tithe.

It hath been held, that the Vicar upon a general indowment shall not pay Tithes of his Glebe to the Parson, or the fruits that arise from the same, *Quia decimas Ecclesia Ecclesie reddere non debet.*

So if a Vicar be indowed of all the small Tithes arising within the Parish, yet he shall not have the small Tithes arising upon the Glebe-Lands of the Parson.

Tithes by prescription may be appendant to an antient Chappel.

To whom the Tithes in the Vacation belong.

St. 28. H. 8. c. 11.

Rolls 655. k. 3.

Cap. Nullus Rector verb. decesserint. Whether the Vicar and Parson shall pay

to each other. Crompton's Case. P. 7. Car. 1. B. R.

Cro. El 578.

Tithes may belong to a Chap-

pel.

13 Aff. p. 2.

Dyer 87.

Raft. Entr.

Tresp. in

dismes 4.

& Præmu-

nire in

Rome 4.

C H A P. III.

The third Chapter shews of what things Tithes are due, and in what manner the Tithes of Hay and Corn are to be paid.

*Of what things
Tithes are to
be paid.*

Co. 11. 160.
F.N.B. 53 E.

Lindwood c.
Quoniam
propter verb.
non deductis
expensis.

*How Tithes of
Corn are to be
paid.*

St. 27 H. 8. c.

20.

32 H. 8. cap. 7.

Tithes regularly are to be paid of all things annually arising from the ground, either of themselves, or by the Culture and Industry of the Parishioner, without any deduction of charge in their proper kinds, as soon as the same may be separated and divided from the nine parts in Sheaves Garbs or Heaps. But the manner and form of the payment of Tithes is for the most part governed by the Custom of the place: and therefore if by Custom the tenth part of Corn or Hay hath been measured forth growing upon the Lands, as 'tis in some parts of *Lincolnshire*; this manner of Tithing is to be observed; for in what manner soever the Tithe hath been paid time out of mind, in such manner it still ought to be paid; and therefore where Tithe Corn hath used to be paid time out of mind in Sheaves or Garbs bound up, it is no good payment to leave it in bonds unbound, as I have known some contentious Parishioners do.

So

So for the Tithe of Hay, if the Parishioner have used to make it into Hay-cocks before they have set forth their Tithes, they must do so still; but where there is no such Custom, they may set it forth in Grass-cocks.

The same order ought to be observed in all other things arising from the Ground as Rape Saffron, &c. and other fruit.

But no Tithes are to be paid for the Rakings of Corn, unless the Parishioner fraudulently scatter his Corn to cozen the Parson of his Tithes.

Rakings.
2 Inst. 652.
Cro. El. 660.
More 278.
Cro. Jac. 42.
Yelverton 86.
Hutley 133.
Rolls 1. 645.
2. 11, 12, & 13.
Aftermaths.

Neither are Tithes to be paid of the aftermaths of Meadows, nor of balks in Corn Fields, or of the stubble of Corn: But if the Meadowing be so rich, that there is two Crops of Hay got in one Year, or two crops of Woad, &c. there the Parson shall have Tithe as well of the latter as of the former Crop.

If a Man gather green pease to spend in his House, and there spend them in his Family, no Tithes shall be paid for the same; but if he gather them to sell or to feed Hogs, there Tithes shall be paid for them.

Rolls 1. 647.
a. 11, 12.
Green Pease.

Neither shall Tithe Hay be paid for the Grass growing upon head-Lands, which are only large enough for the turning of the Plow.

Headlands.
Roll 1. 646. 2.
19.

² Inst. 652.
Orchard.

But Tithe shall be paid of the Hay and Corn growing in Orchards, though the Tithe of the fruit growing in them were paid the same Year, be it Apples Pears Cherries, &c.

More 683.
Cro. Jac. 47.
Fodder.

There hath been some question about fodder gotten in the fenn Lands in *Cambridgeshir* and elsewhere, and spent upon beasts of the Plow and Pail, whether it should pay Tithes or no; but it hath been resolved, that Tithes shall as well be paid of this Fodder, as of other Hay spent upon the Beasts of the Plow and Pail.

*Grass cut in
Meadows for
Beasts of the
Plow,*

But it has been resolved, that for Grass cut in Meadows to feed the Beasts of the Plow, and not made into Hay, Tithes should not be paid thereof.

*Wells vers.
Crawly. T. 1.
Car. 1. B. R.
Tares Vetches
cut green.
Cro. Car. 393.
Jones 357.*

It hath been resolved, that Tares Vetches, &c. cut green for the feeding Beasts of the Plow, by Custom may be freed from the payment of Tithes, but not without Custom.

C H A P. IV.

The Fourth Chapter sets forth where, and in what Cases, and in what manner, the Tithes of Wood are to be paid.

IN the time of Stratford Archbishop of Canterbury, in or about the 17th Year of the Reign of E. 3. 1343. there was a Provincial Canon or Declaration made to this effect.

How and where Tithes Wood is to be paid.

Declaramus provisione concilii sylvam caduam illam fore, quæ cujuscunq; existens generis arborum in hoc habetur ut cadatur, & quæ etiam succisa rursus ex stirpibus aut radicibus renascatur; ac ex ea decimam utpote realem & prædialem parochialibus seu matricibus Ecclesiis persolvendam, nec non Sylvarum possessores hujusmodi ad præstationem decimarum Lignorum ipsorum Excisorum in eis sicut feni & bladorum omni censura Ecclesiastica fore Canonice compellendos.

Canon. Lindwood c. Quamquam ex solventibus, &c.

But in or about the same Year there was a Petition in Parliament, that no Man should be impleaded in Court Christian for the Tithes of Woods or under-Woods, but in places accustomed, which was answered; As heretofore, the same shall be.

Excess Abridg- ment p. 40. nn. 51. & ibid. 80. num. 37.

The

The like Petition was in the 25th Year of E.3. and other Parliaments, till at the length in the 45th year of the same King an Act of Parliament was made to this effect reciting,

St. 45.E.3.c.3.
Tithes not to
be paid of great
Wood.

That whereas they sell their great Wood of the age of twenty years or of greater age to Merchants to their own profit, and in aid of the King in his Wars, Parsons and Vicars of Holy Church do implead and draw the said Merchants in Suit in the Spiritual Court for the Tithes of the said Wood by the Name of Sylva cædua, whereby they cannot sell their Woods to the very value, to the great dammage of them and the Realm. It is therefore by that Law ordained and established, that a Prohibition in this case shall be granted, and upon the same an Attachment, as hath been used before this time.

9 H. 6. 56. a.
T. 27 E. 1. ro.
28. a.

*Prohibition in
Point.*

50 E. 3. 10. 2.

*Exact Abridg.
118. nu. 21.*

By which it appeareth, that this Act of Parliament was but a Declaration of the Common Law, Prohibitions and Attachments thereupon in such case having been formerly used, and so was *Paston's* opinion. 9 H. 6.

This Act of Parliament was after questioned by the Clergy pretending it did not pass as an Act of Parliament, but only as an Ordinance and so not binding. And thereupon the Commons in the next Parliament petitioned, that it might be enacted, that for Wood above twenty Years

Years growth no Tithes should be due, and that in all such cases a Prohibition might be granted. To which was answered, that such Prohibition should be granted as then before had been used.

But Sir *Edward Coke* in his Commentary upon *Magna Charta* does sufficiently prove it was an Act of Parliament.

1. Because it is entred upon the Parliament Roll amongst other Acts of Parliament. 2. It is under the Title in that Roll of Statutes of E. 3. *Anno Regni sui* 45. 3. It was proclaimed with the rest of the Acts of that Parliament. 4. It is penned in the form of an Act of Parliament, viz. (it is ordained and established.) 5. It hath the consent of the Lords and Commons. 6. There hath been infinite Prohibitions upon it. To which let me add, that in the Parliament of 8 R. 2. It was owned for an Act of Parliament, in which Parliament 'tis like many of the Persons were present that were at the making of the said Act.

2 Inst. 643.
644.

8 R. 2.
*Excell Abridge-
ment of Re-
cords* nu. 21.

And in 9 H. 6. Exception was taken to the Prohibition, because it was not grounded upon this Statute.

9 H. 6. 564.

And in the 11 H. 4. it was affirmed by *Thirning* to be an Act of Parliament and in force.

11 H. 4. 9.
*Seld. hist. de-
cim.* 236.

But whosoever desires more satisfaction in this point, I refer them to Mr. *Selden's* History of Tithes, and the other places mentioned in the margin.

2 Inst. 643.
644.
Roll 1. 637.
638, 639.

Not-

Notwithstanding this Act, many questions were started what was *Sylvacada*, and many Petitions in Parliament to have it declared; to which I find no positive answers, but sometimes referred to usage, and sometimes the King took time to advise.

Sylvacada
quid.
50 E. 3. 10. b.

But *Belknap* a learned Judg, 50 E. 3. declares, that *Sylvacada* is to be intended every manner of Wood that may be cut and will grow again: which all manner of Wood will do, as he there says, if it be preserved from Cattel; and therefore the Defendant in the Prohibition in that case was put to Traverse, that he sued not in the Spiritual Court for the Tithes of gross Woods.

So that the question at this day chiefly is, what shall be said gross Woods? To which question

2 Inst. 643.
What shall be
said great
Wood.

Contra

Rolls 1. 640.

95.

Plo. 470. a. b.

Contra Rolls

1640. q. 7.

Hob. 288.

Rolls 1. 640. q.

6, 7, 8.

Hob. 219.

Noy. 30.

Cro. Jac. 199.

The Judges of the Common Law have resolved, that all sort of Wood that is usually employed for the building of Houses, Mills, &c. are gross Woods, and within this Statute: of which sort are Oak Ash Elm Beech Horse-beech and Horn-bean against the opinion in *Molyn's* case: Asp is likewise esteemed a gross Wood, being sometimes used for Timber; but for Willows Haws Hollies Maples Birch Alders Thorns, &c. of what age or bigness soever they be, they are regularly to pay Tithes.

But

But if they be cut for fencing of grounds, or for fuel to be spent in the Houses of the owner within the same Parish, no Tithes shall be paid of them.

Cro. El. 499.
6c9.
2 Inst. 652.
Cro. Car. 113.
More 683.
Roll 1. 644.2.
1,2,3.

But if by Custom Tithes have been paid of such Wood, the Custom is to be observed.

So if a man cut Wood for the burning of Bricks, which are employed for the repair of houses and buildings of the owner within the same Parish, no Tithes shall be paid for it; but if he make Bricks to sell, or for making of Houses of pleasure, or other than for necessary Habitation, he shall pay Tithe for the Wood spent therein, if Tithable.

Of what Wood Tithe shall not be paid.
Roll 1. 645.
2. 8, 9.
Burning Bricks.
Roll 1. 645.2.
10.

If a man convert his Land into a Nursery for fruit-trees or other trees, and sell them for profit to such as transplant them into other Parishes, he shall pay Tithes of them.

Nurseries.
Roll 1. 637. E.
6.
Cro. Car. 526.
Jones 416.

If a Man cut his Coppice Wood, and pay Tithe of them, and soon after grub up the roots to cleanse the ground, he shall not pay Tithes of them.

Grubbed Wood.
Roll 1. 637.
E. 7.

Upon the whole matter it is left a little uncertain, which shall be accounted gross Wood; because in some Countries almost the meanest sort of Wood is used for building, and the Judgments in our books vary, some allowing one thing for Timber, which another contradicts; but the proper and undeniable Wood for Timber

ber are Elm, Ash and Oak, which are used for Timber in all Countries & Places: It rests now to shew in what Cases such Woods as are accounted gross Wood shall pay Tithes.

If Oak, Ash, Elm, &c. which are esteemed Timber in the Countries where they grow, be cut under one and twenty years growth, they are accompted *Sylvacada* and ought to pay Tithes.

Loppings of Trees.

2 Inst. 643.

Cro. Jac. 100.

More 762.

Plow. 470. b.

Roll 1. 640. q.

1. 3. 4.

Co. 11. 48. b.

Co.

But the Loppings of great Oaks, Ashes, &c. though the Lops be under twenty years growth, shall not pay Tithes; for they are priviledged by the bodies, neither shall Tithes be paid of the shoots and under wood, which grows from the roots and stocks of such Timber-trees, and trees above the growth of twenty years, which have been felled.

Bark.

2 Inst. 643.

Co. 11. 49. a.

Nor shall Tithes be paid of the Bark of such Trees as are Timber-trees, and priviledged from the payment of Tithes.

2 Inst. 643.

Dotards.

2 Inst. 643.

Cro. El. 477.

Roll 1. 640. q.

2.

Co. 11. 49. a.

Rolls 1. 640.

q. 1.

But Tithes shall be paid of the mast, acorns, &c. of Timber-trees, because the same is of annual increase.

Neither shall Tithes be paid of Timber-trees, which become dotard, and are become *arida, sicca, & non portans folia in estate nec existens maberemium.*

If one lop Oaks, Ash, &c. under twenty years of age, and after let them grow above twenty years of age, no Tithes shall

shall be paid of them or their Lops. Wood mixt
It hath been held, that if a Wood- with great and
ground be mixt with Woods tithable, and Underwoods.
Woods not tithable, and the greater part Parsons Law.
be such as are not tithable, it shall privi- 99. T. 19. Jac.
ledge the rest and pay no Tithes; but if the B. R.
greater part be tithable it shall pay Tithe Buckhurst
of such part as is tithable; for where the vers. New-
greater part is great Wood, the whole shall man Parson of
be called grand Wood à majeure. Staplehurst.
T. 36. E. B. R.
per Henden.

It hath been a question amongst the Can- Who shall pay
onists, who shall pay the Tithes of Wood the Tithe of
tithable, the buyer or the seller; Mr. Lind Wood.
wood in his Gloss upon the Canon before Lindwood c.
recited, seems to be of opinion, that the Quamquam ex
buyer shall pay the Tithes, Quia verum e- solventibus &
nim est quod decima sequitur fructus, & verb. Sylvarum
cum onere decima transferuntur fructus in pos. & cap.
alterum, and this opinion of his seems Quia quidam
reasonable, where the Owner of the wood maledictionis
sells the whole wood together, or parcels verb. asportans
it out, and the buyers cut it; but if the
Owner of the Wood cut it himself, and
then sells it by parcels, there it seems rea-
sonable, that the Owner of the Wood
should pay the Tithe, but by the Com-
mon Law the Parson may sue the one or
the other at his Election.

And it is to be observed, that a whole Roll I. 656.
Province, County or Hundred may pre- l. i.
scribe in non decimando of Woods, as in Roll I. 637. f.
the Wilds of Kent and Suffex and other
places, and therefore the Commons in
the

Prescription of
not Tithing of
Wood.

The Parsons Counsellor: Part II.

the 18 *El.* upon the making of the afore-
said Canon moved in Parliament, that no
man should be drawn in Plea in the Court
Christian for the Tithes of Wood or
Underwood, except in such places where
Roil 1. 637. f. such Tithes have been used to be paid; for
by the strict Letter of this Canon, Tithes
were to have been paid of all manner of
Wood great and small in all places; to
which the Answer is recorded, *Let it be
done in this also, as has been done before
time.*

*The manner of
paying Tithe
Wood.*

The manner of the payment of Tithe
wood must either be by the measure of
the ground by Poles, Perches, &c. as 'tis
in some parts of *Lincolnshire*, or every
tenth Faggot, Billet, &c. as 'tis paid of
Corn and other things, but in this, as in
all other Cases, the Custom of the place is
to be observed.

White verf.
Arch. M. 15.
Jac. C. B.

But no Tithe shall be paid of Wood
cut for Hop-Poles to be used in the same
Parish, where the Parson hath the Tithe
of the Hops.

C H A P.

C H A P. V.

The Fifth Chapter shews where, and in what Cases, Tithe is due for the herbage or agistment and Pasturage of Cattle, and who is to pay the same.

I Am now come to speak of the Tithe *In what Cases Tithe Herbage is due.* of herbage, agistment or depasturing of Cattel, for which I find no Canon, save a Clause of a Provincial Canon of Robert Winchelsey, dated 1305. in these words.

De Pasturis autem & pascuis tam non The Canon communibus quam communibus statuimus, quod decima fideliter persolvantur, & hoc per numerum animalium & dierum, ut expedit Ecclesie.

The Tithe of the Herbage or Agistment of Cattel is due, where the Owner or Farmer of any Lands depastures the same with barren Cattel that yield no profit at all to the Parson; which is a Tenth Part of the yearly value of the ground so eaten, but commonly a twentieth part is accepted; but in this, as in all other Tithes the Custom and Usage of the place is to be observed.

Cro. Car. 237.

559.

Jones 254.

Who shall pay it.

Cro. El. 363.

2 Inst. 651.

Cro. Car. 257.

559.

Roll 1 647. a.

9 10.

Roll 1. 643.

R. 4.

Bulst. 1171.

Poph. 126. 142.

Wild vers.

Lampron.

T. 15. Jac. B. R.

per 3 Inst.

vers. Hough-

ton. *Saddle**horses.*

Roll 1. 646.

a. 4. 5.

*Beasts bred for**the Plow and**Pail.*

If the Owner of the Land agist it with Forainers Cattel, then the Owner of the Land shall pay the Herbage Tithes; but if he let the ground to a Tenant, then the Tenant is to pay it.

But no Herbage Tithe shall be paid for the Agistment of Beasts bred for the Plow and Pail, and so imployed in the same Parish; nor for Beasts fed and spent in the Owners house in the same Parish.

So if a man eat a ground with his own Saddle Horses, he shall pay no Tithes for the same; but if an Inn-keeper eat up a ground with Guest horses, he shall pay Tithes for the herbage of them.

If a Forainer that lives in another Parish depastures a ground with Cattel bred for the Plow and Pail, to be imployed in a Foreign Parish, he shall pay Tithe for the agistment of such Cattel.

And there is no difference between the Case of a Parishioner and a Forrainer, where the ground is eaten with unprofitable Cattle, and not bred for the plow and pail, Saddle horses and fatting Cattel, as aforesaid, to be spent in the Parishioners house; but that the Parishioner, as well as the stranger, shall pay Tithe; but for the breeding of Cattel for the plow and pail, &c. conduces to the profit of the Parson in his other Tithes, and therefore no herbage ought to be paid for the agistment of them.

No

No Tithe is due to the Parson for the herbage of Beasts *feræ naturæ*, as Deer, Co-neys, &c. without a special Custom.

2 Inst 651.
*Herbage of
Beasts feræ
naturæ.*
F.N.B. 53.g.

Fitzherbert in his *natura brevium* seems to be of opinion, that there is no Tithe due for the herbage or agistment of Cat- tel, and adds this reason, because they pay Tithe of the Cattel there depastured, which proves his meaning to be, that there is no Tithe herbage due, where the ground is depastured with profitable Cattel.

If a ground be eaten with profitable Cattel, as Milch Cows, Ews, Lambs and Cattel bred for plow and pail, &c. and also with barren and unprofitable Cattel, and the profitable Cattel exceed in number, it should seem the greater part being profit- able should free the rest, *tamen inde que- re.*

*Pasture eaten
with mixt Cat-
tel.*

Roll i. 641. q.
20.

No Tithe Herbage is to be paid of the Agistment of Oxen, Horses or Beasts of the plow employed and used in the same Parish, for they are profitable Cattel to the Parson.

Quere.
Roll i. 646. a.
6, 7.
*Beasts of the
Plow.*

If a ground be eaten with barren and unprofitable Cattel, and profitable Cattel together, and the profitable Cattel are the less in number; I conceive there's no doubt but the Landholder must pay Tithe in kind for the profitable Cattel, and Tithe of the herbage for the rest, and not her- bage for the whole.

*Ground eaten
with mixt
Cattle.*

Tares and Vetches eaten green.

Roll I. 646.a. 6,7.

Roll I. 647.a. 8. and 16.

Of what Cattel herbage is due.

Roll I. 647.a. 13.

Roll I. 647.a. 15.

P. 7. Jac. C.B. Parsons Law.

If there be a Custom in a Country to sow Tares, Vetches, &c. and to eat them green upon the ground before they are ripe with Horses and Beasts of the Plow, no Tithes shall be paid for the same.

If a Stranger or a Parishioner buy barren Cattel, and depasture and feed them for sale, he shall pay Tithe for the herbage of them.

If a Man buy Oxen, Steers or Horses, and depastures, and after sells them, and doth not without fraud imploy them in the Plow, he shall pay Tithes for their agistment: and if he work them fraudulently to defeat the Parson of his Tithes, it will not serve his turn.

So if a man buys or rears young Cattel, and depastures them in a Parish, and does not imploy them there for the Plow or Pail without fraud, as hath been said, he shall pay Tithe for the herbage of them.

But for the Grass of Fallows no Herbage shall be paid, because it is for the bettering of the Parson's Tithes in the Year following.

C H A P.

C H A P. VI.

The Sixth Chapter shews where, and in what manner, the Tithes of Calves, Milk, Cheese, Wool, Lambs, Piggs, &c. are payable.

IN the payment of these sort of Tithes I do not observe that the Common Law crosses the Canon in any thing material, and therefore I shall recite you the Provincial Canon made by Robert Winchelsey, and his Clergy Anno Dom. 1305. which is to this effect,

How the Tithes of Calves, Milk, Wool, Lambs, &c. are to be paid

De nutrimentis autem animalium, scilicet de agnis, statuimus, quod pro sex agnis & infra sex oboli dentur pro decima; si septem sint agni in numero, septimus Agnus detur pro decima Rectori: ita tamen quod Rector Ecclesie qui septimum Agnum recipit, tres obolos in recompensationem solvat parochiano a quo decimam recipit. Qui octiduum recipit, det denarium: Qui vero nonum, det obolum parochiano, vel expectet Rector usque ad alium annum, donec plenarie decimum agnum possit recipere si maluerit, & qui ita expectat semper exigat secundum Agnum meliorem vel tertium ad minus de agnis secundi Anni, Et hoc pro expectatione primi anni. Et ita intelligendum est de

The Canon. Lindwood c. Quoniam propter.

decima lana: Sed si oves alibi in Hyeme & alibi in Aestate nutriuntur, dividenda est decima; similiter si quis medio tempore emerit vel vendiderit oves, & certum sit à qua parochia illæ oves venerint, earundem dividenda est decima, sicut de re quæ sequitur duo domicilia: si autem incertum fuerit, habeat illa Ecclesia totam decimam, infra cujus limites tempore tonsionis inveniuntur. De lacte vero volumus quod decima solvatur dum durat, videlicet de caseo tempore suo, & de lacte autumno & Hyeme, nisi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decimæ & commodum Ecclesiæ.

How Wool and Lamb is to be paid.

By this Canon the payment of the Tithes of Wool and Lambs is settled in this manner, that if the Parishioner have under seven Lambs or Fleeces he shall pay a half peny for every Lamb and Fleece; and if there be seven Lambs or Fleeces, & under ten, then the Parson or &c. is to allow a half penny for every one that is wanting; but where this Canon gives the Rector election to take his Tithe in this manner, or let them run on till a Lamb or Fleece be due in the ensuing Year, that is not allowed by our Law; for Tithes must be paid annually; where Sheep are kept in one Parish in Summer, and another in Winter, the Tithes are to be divided: So if one buy in Sheep out of another Parish, the Tithe is to be divided; that

P. 14. El. Har
purs Rep.

that is, to each Rector, &c. his proportion for the time they were respectively kept in the respective Parishes; but if it be not known from whence Sheep so bought in came, then the whole Tithe is to be paid, where the Lambs fall, and the Sheep are shorn.

By the Canon the Tithe of Milk is to be paid in Cheese whilst the Parishioner makes Cheese; but in Autumn and Winter, it is to be paid in kind: but this part of the Canon is generally over-ruled by the Custom of the place; for in many places they pay the Milk in kind all the year, in some places they pay only Cheese, and in some neither Cheese nor Milk, but some small rate for it: and in some Countries they prescribe to pay no Tithe of their Milk at all; and the Custom of the place in this, as in all other Tithing, is to be observed notwithstanding the Canon: but for the better explanation of the meaning of this Canon there was a second Canon made, but the date thereof I cannot attain to, the tenor whereof follows,

*Quoniam, ut audivimus, super decimis & nutrimentis animalium inter Ecclesiarum Rectores propter amotiones pecorum ad diversarum parochiarum pasturas diversis anni temporibus contentiones multimoda-
oriuntur: Nos viam pacis preparare vo-
lentes statuendo definimus & definiendo sta-*

Lindwood c.
Quoniam audi-
vimus.
Canon where
She. p. &c.
skist their Pa-
sture from one
Parish to ano-
ther.

tuimus, quod ad Ecclesias in quarum parochiis oves à tempore concionis usq; ad festum sancti Martini in hyeme continuè pascuntur & cubant, Decima lane lactis & casei ejusdem temporis, licet postea amota fuerint ab illa parochia & alibi tondeantur, integre persolvatur; & ne fraus fiat in casu prædicto præcipimus, quod antequam oves amoveantur à pasturis vel etiam distrabantur, Ecclesiarum Rectoribus sufficienter de solvenda decima caveatur. Quod si infra prædictum tempus ad diversarum parochiarum pasturam transferantur, qualibet Ecclesia pro rata temporis portione decimam percipiet earundem minori triginta dierum spatio in rata temporis minime computando. Si vero per totum tempus prædictum cubant in una parochia & pascuntur continuè in alia, inter ipsas Ecclesias decima dividatur. Quod si post festum sancti Martini ducantur ad pascua aliena, & usq; ad tempus tonsionis in una vel diversis parochiis sive in propriis pasturis dominorum suorum sive alterius cujuscunque pascuntur, habita ratione ad numerum ovium pascua æstimentur & secundum æstimationem pascuorum ab eorum dominis exigantur decima: Decima vero lactis & casei de vaccis & capris proveniens ubi cubant & pascuntur, ibi solvatur. Alioquin si cubant in una parochia & pascuntur in alia parochia, decima inter Rectores dividatur omnino. Agni vero, vituli pulli Equini & alii fetus decimales habita ratione ad loca

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loca diversa ubi gignuntur, oriuntur & nutriuntur, & ad moram quam traxerint in eisdem, particulariter decimentur. Quid vero pro decima debeatur, ubi lac propter paucitatem vaccarum vel ovium ad caseum faciendum non sufficit; Et quid pro agnis, vitulis, pullis equinis, velleribus, aucis, aut aliis hujusmodi, de quibus propter eorum modicitatem decima certa dari non potest, consuetudini locorum duximus relinquendum. Item precipimus quod si quis post festum sancti Martini oves occiderit, vel si oves quovis casu fortuito moriantur; Decimam legitimam parochiali Ecclesie solvere non postponunt. Et si oves extraneae in alicujus parochia tondeantur, Decima ibidem tradetur Rectori Ecclesie, nisi sufficienter doceri posset quod pro decima alibi satisfactum ut solutionem ibidem faciendam modo legitima valeat impedire.

There may some question be made upon the first Paragraph of this Canon, whether the Rector, where the Sheep are kept from shearing till Martlemas should have the whole Tithe of the Sheep for the whole Year: but Mr. Lindwood in his Gloss conceives it is intended the whole Tithe that ariseth during that time, which for Sheep will be nothing at all; but certainly it were very unreasonable that the Rector of the Parish where Cattel are kept but for half the Year, should have the whole Tithes, and it cannot be intended

to

*Sheep kept less
than thirty
days.*

to be any more than the proportion for the time they are so kept.

But by this Canon, if Sheep be kept less than thirty days in any Parish, no rate is to be allowed to the Rector of that Parish where they are kept so small a time.

If Sheep be bought in a little before share-day, and it is not known that they answer the Tithes elsewhere, the whole is to be delivered to the Rector of the Parish where they are shorn.

Where the Milk is so little that it will not make Cheese, or the Calves, Lambs, Fleeces, Colts, Geese, &c. are so few in number that there will none fall to the Parson, the Canon gives no rule of Tithing in that case; but refers it to the Custom of the place: but the Canonists generally hold, that Custom to pay less than a tenth part is not binding; for says *Lindwood*,

*Custom to pay
less than the
value of the
Tithes.
Verb. Consu-
et. loc.*

Quod laici minus solvant quam decimam non potest consuetudine introduci, quia esset contra jus divinum, plus tamen potest deberi ex consuetudine. And concludes, *Quod autem hic loquitur de consuetudine locorum, intelligas de tali consuetudine quae non excludit solutionem decimae, sed de tali quae limitat ipsius decimae solutionem ad commodum Ecclesiae, scilicet ad verum valorem vel amplius*; herein I perceive the Canonists and Common Lawyers agree, that a Custom to be free from payment of any Tithe

Tithe, or a rate for it, is not good, except it extend to a whole Country, County, &c. and that where there is competent livelihood for the Minister beside; but the Common Law allows of Customs and Prescriptions, where money or some other thing is paid in lieu of Tithes, though not to the full value, as shall hereafter be made appear in its proper place.

By this Canon 'tis provided, that where Cows feed in one Parish, and lodge in another, that the Tithes shall be divided.

For the Tithes of Lambs, Calves, Colts, &c. the Tithe of them by this Canon is to be apportioned with respect to the places where they were engendred, brought forth and nourished.

If a mans Sheep dye or be killed after *Martlemas*, a proportionable Tithe must be paid for them.

The time of the payment of Lambs, Kids, Calves, Pigs, &c. is regularly when they are so old, that they may be weaned and live without the Dam, unless the Custom of the place confine the payment to any certain time or age, and Wool is to be paid at Sheer-day.

The time when Calves, Lambs, Piggs, &c. are to be paid.

If several mens Sheep depasture together in one flock, or under one Shepheard, yet this shall not make them to be tithed together, but every Owner shall pay his Tithe of them by himself, but if the head

Lindwood et Quoniam propter verba sunt

of

*Several mens
sheep depa-
sure together.*

of a Family have his flock mixt with his Childrens Sheep which are under his tuition, and he takes the profit of them to his own use, in that case they shall be tithed together.

*Ero. El. 363.
T.
Wool locks.*

It hath been resolved that where Tithe Fleeces of Wool are paid, there shall be no Tithe paid of the locks and belts.

*Roll s. 645. z.
14, 15, 16.
Bulstrode l. 3.
242.
Neckings.*

There is a Custom in some Countries to shear their Sheep about the necks at Michaelmas, that the Wool may not in Winter be pulled off with Bryers, and for this sort of Wool without fraud, it hath been held that no Tithe shall be paid; and so of the birling of Sheep without fraud, no Tithe is to be paid.

*Roll l. 646.
z. 17.*

*Roll l. 646.
z. 18.
Sheep dye of
the Rot.*

If a Man's Sheep dye of the Rot or other disease, or if the owner kill or sell them as hath been said, he must pay Tithe for the Wool ratably.

Though the Canon direct one of seven to be paid only for Wool and Lambs, yet in most places the same order by Custom is observed for Calves, Colts, Pigs, Geese, &c. which Custom I presume took its rise and beginning from this Canon.

*Cap. sancta
Ecclesia
verb. eorum
valorem.*

By the Canon Law where there is no customary manner of Tithing for the Tithe of Pigs, Geese, Calves, Colts, &c. where they fall short often, the tenth part of the value is to be paid.

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And note that where Tithe Milk is paid in kind, there no Tithe Cheefe is due, and so where Tithe Cheefe is paid for so long, no Tithe Milk is to be paid.

Lastly, note, that where any Person hath Cattel Tithable going in a Ground or Common whereof the Parish is not known, the Tithe is to be paid in the Parish or place where the party lives that owns the Cattel:

Lindw. cap.
Quoniam prop-
ter verba de
Cafao.

Stat. 2, E. 6. a.
13.

CHAP. VII.

*The Seventh Chapter shews where,
and in what manner, the Tithes
of Seeds, Fruit, Mast, Bees, &c.
is to be paid.*

Tithes are to be paid of the fruits arising in Orchards and Gardens in their proper kinds when gathered, unless there be some *modus* or rate Tithe paid in lieu thereof, and so of the Seed of flax, hemp, &c. is to be paid when drest up; but this must be understood where the Tithe of the Hemp and Flax is not paid till after the Seed is gathered, for if the Tithe be paid before the Seed be threshed,

How the Tithe of Seed, Fruit, Mast, Bees, &c. is to be paid.

*How the Tithe
of Seed, Fruit,
Mast, Beer,
&c. is to be
paid.*

Roll. 1. 640. q.
10.
Gro. Car. 559.
Jones 447.
An. b. 51. g.
Roll. 1. 635.
c. 1.
Cap. Quoniam
propter.

threshed, ripld out or gathered, then
no Tithe Seed is to be paid of the rest:
The Tithe of Crabs, Mast, &c. is like-
wise to be paid, when the same are ga-
thered, or satisfaction is to be given
if eaten with Swine on the ground; and
the Tithe of Bees is to be paid by the
tenth part of the Honey and Wax, the Ca-
non is that

*De Apibus, sicut de omnibus aliis bonis
justè acquisitis quæ renovantur per annum,
statuimus, quod decimæ solvantur & exi-
gantur debito modo.*

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C H A P. VIII.

The Eighth Chapter shews where, and in what manner, Tithes of Pigeons, Conies, Fish, Deer and other Beasts and Birds feræ naturæ, are Tithable.

BY the Common Laws of England there is no Tithe due for Birds or Beasts that are *feræ naturæ*, and therefore it hath been resolved, that no Tithe shall be paid for fish taken out of the Sea or River, unless by Custom as in *Wales, Ireland, Yarmouth, &c.* neither, for the same reason, is any Tithe due of Deer, Conies, &c. but if due by Custom it must be paid.

And if a man keep Pheasants, or other wild Fowl within limits by clipping their wings, yet no Tithes shall be paid of their Eggs or Young not being reclaimed, for as much as if their wings were not cut they would fly away.

But of young Pigeons in Dovecoats or in Pigeon-holes about a mans house, Tithe shall be paid, if they be sold; but if they be spent in the Family, no Tithe shall be paid for them.

Whether Tithe be due of beasts and birds feræ naturæ.
Cro. Car. 264.
339.
Roll 1. 635. c.
4. 6, 7.
Noy 108.
St. 2. E. 6. c. 13.

Roll 1. 635. c.
c.
Roll 1. 636. c.
5.
Hetley 147.
Rolls 1. 644.
2. 4, 5, 6.

It

More 599.

It is said in *Hughton and Princes Case* in *More's Reports*, that no Tithes shall be paid of tame Turkeys, Pheasants or Partridges, nor their Eggs, *quia fera natura*, but I believe the Book is misprinted, for after they are reclaimed, they cannot be said to be *fera natura*.

C H A P. IX.

The Ninth Chapter shews, what Tithes are to be paid for Mills, and what kind and nature they be of.

Whether Tithes are to be paid of Mills, and how.

THE Canon is Cap. *Quoniam propter De proventibus autem molendinorum volumus quod decima fideliter & integrè solvantur.*

And *Articuli Cleri cap. 5.* is to this purpose.

Si quis in fundo suo molendinum erexit de novo, & postea à Rectore loci exigatur decima de eodem, exhibetur Regia prohibitio sub hac forma. Quia de tali molendino hactenus non fuerunt solute, prohibemus, &c. Et sententiam excommunicationis, si quam hac occasione promulgaveritis, revocetis omnino. Responsio: In tali casu nunquam exivit Regia Prohibitio de Principis voluntate, qui & decernit talem perpetuo non exire.

It

It is made a question first, whether any 2 Inst. 622.
Tithes are due for Mills or not, which Sir Edward Coke in his second Institutes says, was never judicially determined that he knows of: and it was held in the Case of a Fulling Mill no Tithe was due; for of profits that come only by the labour and industry of man no Tithe is to be paid, and the same reason holds for Corn- Mills. Cro. Car. 523. 524.

The next question is, admitting, that Tithes are due for Mills, whether the same be predial or personal.

Sir Edward Coke is of opinion, that in Case any Tithe be due, it is only a personal Tithe, being acquired by the labour and industry of the Miller, and takes no Increase from the ground to make it predial: And the Statute of 2 E. 6. is, that every person shall justly set forth, yield and pay all predial Tithes in their proper kinds, as they arise and happen, which cannot be applied to the Millers taking of the Toll dish, nor to Fulling Mills, Iron Mills, Paper Mills, &c. which are all comprehended under the word Mill; and no Tithe can be paid *in specie*, for if the Parson should have every tenth Toll dish, then it would often happen, that he should have twice Tithe of the same Corn, which is against the Law; and such Tithe as the Tenth Toll dish has never
S been

been paid in any place, that I have known or heard of.

And if it be a personal Tithe, as there is great reason that it can be no other, then it must be paid with the deduction of the expences and charges, and is not payable but in such places, where personal Tithes are payable by Custom: See more thereof in the twenty second Chapter.

Cap. Quoniam propter verbo intergrè.

But the Canonists hold, That the tenth Toll dish shall be paid as a predial Tithe without deduction of expences, which doth not agree with the Common Law, and is therefore not binding.

C H A P. X.

*The Tenth Chapter shews, whether
Tithes ought to be paid of Hawking,
Hunting, Fishing, Fowling, &c.*

THese are all comprehended under personal Tithes, for that these things being obtained by the labour and industry of the Party, and the things obtained are *feræ naturæ*, and not of their own nature Tithable in their proper kind, unless the particular Custom of the place require it; and therefore I shall refer these to the twenty second Chapter, where I shall speak of Personal Tithes.

*Tithe of Haw-
king, Hunting,
Fishing, Fow-
ling if due.*

C H A P. XI.

*The Eleventh Chapter is concerning
the Tithes of Ducks, Geese, Hens,
Swans, and other domestick Fowls
and Birds.*

*Of the Tithes
of domestick
Birds and
Fowl.*

THE Tithe of all tame and domestick Fowl is to be paid in their Eggs, or Young in their proper kind, according to the Custom of the place: Geese, Ducks and Swans are usually paid in their kind, but of Hens and Turkeys, commonly in Eggs, but therein the Custom of the place is to be observed; but note, that where they pay Tithe of the Eggs, there is no Tithe of the Young, nor *è converso* Tithe Eggs paid, where they have the Tithe of the Young.

C H A P.

C H A P. XII.

She Twelfth Chapter shews, of what things Tithes shall not be paid.

Tithes regularly are not due of dwelling houses, and yet a *modus* may be due for a house as well as for land; and it shall be intended, that it was a *modus* for the land before the house was built.

Of what things Tithes shall not be paid.
Co. II. 16. a.
Hob. 11.

No Tithes shall be paid for Hounds, Apes, Popinjays, & *similia*, because they are things only of pleasure.

Things of pleasure.
12 H. 8. 4. b.
2 Inst. 651.

Neither shall any Tithes be paid of those things, which do not increase from year to year; and therefore no Tithes shall be paid for stone got out of Quarries, Pit-coals, Turfs, Slates, Bricks, Quarrels, Tyles, Earthen Pots, nor of any thing made of the earth, nor of marle or lime got for the Improvement of the ground, nor of Tynn, Lead, Copper or other Metal gotten out of the ground, but by Custom Tithes of such things may be due and payable.

Things that increase not.
Roll 1. 636.
d. 1.
Doct. & Stud. 174.

Servants in Husbandry shall not pay personal Tithes, neither shall any Tithes be paid of marriage goods.

Cro. El. 277.
More 908.
2 Inst. 651.
Roll 1. 637. e.
1. Doct. and Stud. 174.
Baxter vers. Hope.
H. 8. Jac. C. B.
10. 1. 109.

No Tithes shall be paid of aftermaths, Stubbles, or Rakings of Corn without fraud.

St. 2. E. 6. c. 13.

No Tithes shall be paid of birds, or beasts, that are *feræ naturæ*, &c.

Rolls 1. 640.
q. 12, 13, 16,
17.

C H A P. XIII.

The Thirteenth Chapter shews, what Force Custom has, as well in the form and manner of Tithing as in the discharge of the payment thereof; and wherein Custom and Prescription differ.

Stat. 2. E. 6. c.

13.

What force Custom has in the manner of Tithing.

BY the Statute of 2 E. 6. it is enacted, that every of the King's Subjects should from thenceforth truly and justly, without fraud or guile divide, set out, yield and pay all manner of their predial Tithes in their proper kinds, as they should arise and happen in such manner and form as had been of right yielded and paid within forty Years next before the making of the said Act, or which of right or of custom ought to have been paid.

In this Act there are three qualifications.

1. It enjoyns the payment of such Tithes, as had for forty Years then past been of right yielded and paid. 2. such as of right ought to have been paid. 3. such as by Custom ought to have been paid.

Tithes due by Custom are of two kinds, 1. where there is a *modus decimandi*, and by Custom Money or some other thing is paid in lieu of the Tithes. 2. where

Tithe

Tithe hath by Custom been paid of things not Tithable, as of Lead in *Derbyshire*; Tynn in *Devonshire* and *Cornwall*; fishing in the Sea, as in *Southwales*, where the Custom is, that if the Parishioner of one Parish land his fish in another, the Tithes are divided between the Parson of the Parish where the fisher lives, and the other where he landed his fish; but if the Parishioner land his fish in the Parish where he himself dwells, then the Rector of that Parish has the whole Tithes.

And this is confirmed by the Stat. of 2 E. 6. cap. 13.

And I have heard that in some Countries they pay Tithe Ale, and Tithe of Limekilns, &c. which in their own natures are not Tithable.

Tithe Ale. Roll 1. 642.

And as by Custom things may be made Tithable which in their own natures are not so; or one thing may by custom, be paid in satisfaction or discharge of another: so custom hath a great influence upon the form and manner of Tithing, for the direction of the time, place, and order of payment of Tithes.

And as custom may make things Tithable, which of their own nature are not Tithable; so a Custom of a Province, County or Hundred may discharge the payment of Tithe of a thing in its own nature Tithable, so there be a competency for the maintainance of the Ministry beside.

Custom of not Tithing where good.

Hob. 266.
Bulst. 2:285.
Doct. & Stud.
cap. ult.
Roll. I. 642.
b. 1. & p. 5, 6,
8.
Co. II. 16. a.
*Custom to pay
Tithes of things
not Tithable.*

Roll. I. 642.
S. 7.
*Difference be-
tween Custom
and Prescrip-
tion.*

And therefore in the wilds of Kent and Sussex they do pretend by Custom to be free from payment of Tithe Wood, or any thing in lieu of it; and so in several Countries they pay no Tithes of their Milk, *Dunton ver. Moyle Finch. 36 Eliz.*

And as Custom may prevail in not Tithing: so it may, as has been said, make things Tithable which in their own natures are not Tithable, as the Rents of Houses, Pigeons eaten in the House, Wood spent in the House; and by Custom Tithe may be paid of Salt, Brick, Lime, Ale, Chickens and other things not Tithable.

Now the difference between a Custom and a prescription is this; every Custom must have dimension and alledged to be within some certain Province, County, City, Hundred, &c. for if it be a general Custom of England, it is Common Law and such Custom must be common to all within such limits; but if it be confined to one certain Person, House, Land, or other thing, there it becomes a prescription, which is a younger daughter to Custom; and therefore when a Man comes to plead a Custom, the manner of pleading is to alledge, that within such a County, Hundred or Town, there is, and from the time whereof the memory of Man is not to the contrary, there hath been such a Custom used and approved in the same, that is to say, that, &c. alledging the Custom as it is.

But

But when you come to plead a prescription you only alledg that you, and all those whose Estate you have in such Lands, have time out of mind paid so much annually to the Parson of D. in full satisfaction and exoneration of all the Tithes arising upon the said Lands, &c.

How to plead a Prescription.

So that Custom and prescription differ in these things, that Custom must be limited and confined to some certain places; prescription is at large; Custom is common to all the Persons and Lands within the limits wherein it is alledged, but Prescription is confined to certain Persons or things: but in this they agree, that they must be constant without interruption, and perpetual from the time whereof the memory of Man is not to the contrary; for if there have been frequent interruptions, there can be no Custom or Prescription obtained; but after a Custom or Prescription is once duly obtained, a disturbance for ten or twenty Years shall not destroy it; for *Multiplex interruptio non tollit prescriptionem semel obtentam.*

Wherein Custom and Prescription differ

1 Inst. 114. b.
2 Inst. 653.
2 Inst. 654.

But I must here observe to the Reader, that though the Civil and Ecclesiastical Laws do in some cases take notice of Custom and Prescription; yet in this they differ from the Common Law, that they allow a usage for forty Years to be a good proof of a Custom or prescription, grounding their judgments upon a decretal Epistle

How the Ecclesiastical Laws look upon Customs and prescriptions. In what they differ from the Common Law in this matter.

Epistle of Pope *Alexand*: the third *Anno Domini* 1180. But this Kingdom never allowed of that Epistle, or yielded any obedience thereunto: so that as well in Spiritual as Temporal Prescriptions and Customs if they come to be tried at Common Law, as all Prescriptions concerning Tithes must be, they must be proved to have been used beyond the memory of any Man to the contrary; for if any Man living, or any authentick Record, or other evidence prove it was otherwise at any time since the first Year of *Richard* the first, which was *Anno Domini* 1189. the Custom or Prescription fails.

2 Inst. 653.

*What Influence
Custom and
Prescription
have in the
manner of Ti-
thing.*

27 H. 8. c. 20.

And the Influence Custom and Prescription have in the Manner of Tithing is confirmed by three several Acts of Parliament.

First, by the Stat. of 27 H. 8. whereby it is enacted, that every Subject of England, &c. according to the Ecclesiastical Laws and Ordinances of the Church of England, and after the laudable Usages and Customs of the Parish or other place where he dwelleth, or occupieth, shall yield and pay his Tithes, Offerings, and other duties of Holy Church, &c.

By this Statute the Ecclesiastical Laws and Canons are affirmed for the payment of Tithes; but in such cases as they are contrary to the Common Law, or Customs of the place, they do not bind.

Next

Next this Act confirms and allows all Usages and Customs of the place where the Tithes arise, which are to be preferred before all Canons and constitutions in the manner of Tithing.

The next Statute is that of 32 H. 8. 32 H. 8. c. 7. whereby it is enacted, That every Person, &c. shall fully, truly, and effectually, set out, yield or pay all and singular Tithes and offerings aforesaid, according to the Lawful Customs and usages of the Parishes and places where such Tithes or duties should grow, arise, come, or be due.

This Act seems only to extend to customary Tithes, and so doth the Statute of 2 E. 6. which is,

That every of the Kings Subjects should from thenceforth, truly and justly, without fraud or guile, divide, set out, yield and pay all manner of their predial Tithes in their proper kind as they arise and happen, in such manner and form as hath been of right yielded and paid within forty Years next before the making of the said Act, or of right or Custom ought to have been paid. 2 E. 6. c. 13.

But more of these Statutes in their proper place. I shall now proceed to shew what liberty and priviledg the Parson, Vicar, &c. hath in the grounds where the Tithes arise, for the drying, ordering, and carrying away their Tithes.

C H A P. XIV.

The Fourteenth Chapter, shews, what Priviledg and Liberty the Parson, Vicar, &c. hath in the ground, where the Tithes arise, for the drying, making, ordering and carrying away the same.

2 E. 6. cap. 13.
What Priviledg the Parson, &c. hath in the Lands where the Tithes grow.

BY the Stat. of 2 E. 6. It is enacted, that at the Titling time of Predial Tithes, it should be lawful for every party to whom any Tithes ought to be paid, or his Deputy, or Servant, to see the said Tithes to be set forth and severed from the nine parts, and the same quickly to take and carry away.

This Statute as to the taking and carrying away, seems only declarative of the Common Law: but as to coming upon the Lands to see the Tithes set forth, seems to me to be a new Authority given by this Law, for the owners of the Land are *de-jure* bound to set forth their Tithes duly and rightly; and if they fail therein, the Parson, Vicar, &c. have their remedies; and if the Parishioner do justly and truly set forth his Tithes, although the Parson, Vicar, &c. be not present, or had no notice given him to be present, yet this had been a good setting forth before this Statute:

tute : but it is a fair and just way to do it in the presence of the Parson, Vicar, &c. And note, this Act is warily penned in the singular number, that the party himself, his Agent or Servant may come to see the Tithes set forth, but must not come with a greater number.

And note, that the Parson, Vicar, Impropiator or Farmer cannot come himself and set forth the Tithes without the Licence and consent of the owner of the Corn, Hay, &c. for if the Parson, Vicar, &c. shall of his own head Tithe the Corn, Hay, &c. of any Landholder within his Parish, &c. and carry it away, he is a Trespassor, and an Action will lye against him for it. Jones. 90

But a Parson, Vicar, &c. may *de communi jure*, after the Tithes are set forth, come himself, or his Servants, and spread abroad, dry and stack his Corn, Hay, &c. in any convenient place or places upon the ground where the same grew, till the same be sufficiently weathered and fit to be carried into the Barn, &c. But the Parson, Vicar, &c. must not take a longer time for the doing thereof than what is convenient and necessary; and what shall be said a convenient and necessary time, the Law doth not nor can define, for the quantity of Hay, Corn, &c. and the weather in this case is to be considered; and what shall in this, and all other

12 E. 4. 6.2.
Roll 1.643.
x.2.

other cases of like nature be said, a reasonable and convenient time is to be determined by the Jury, if the point come in issue triable by a Jury; but if it come to be determined upon a demurrer, or other matter of Law, the Judges of the Court where the cause depends are to resolve the same.

And if the Parson, Vicar, &c. shall exceed a convenient and necessary time in the drying, ordering, and carrying away their Tithes; and the Parishioner shall receive damage thereby; an Action of the Case will lye against them for their negligence in this behalf.

But no Action will lye against the Parson, Vicar, &c. in such a case, unless the Parishioner have duly set forth his Tithe and given notice thereof to the Parson, Vicar, &c.

And the Parson, Vicar, &c. may carry his Tithes from the ground where they grew, either by the Common way, or any such way as the owner of the Land useth to carry away his nine parts.

But if the owner of the Soyl, after he has duly set forth his Tithes, will stop up the ways, and not suffer the Parson, Vicar, &c. to carry away his Tithes, or to spread, dry and stack them upon the Land, this is no good setting forth of his Tithes without fraud, within the Statute of 2 E. 6. but that the Parson, Vicar, &c. or other
Owner

Hughes Rep.
329.
Styles 342.

Stiles 348.
Lampen vers.
Woodner P. 8
Car. I. B. R.
per Latch.

Halfey vers.
Halfey.
H. 6. Car. I. B.
R.
Roll I. 643. x.
3.

Owner or Farmer may have an action upon the said Statute, and may recover the treble value; or may have an Action of the Case for such disturbance, as I conceive; or he may, if he will, break open the Gate fence, &c. which hinders him, and carry away his Tithes; but in that he must be cautious that he commit no Riot, nor break any Gate, Rails, Lock, Hedges more than necessarily he must for his passage.

Bulst. 1. 108.

And note, that the Parson, Vicar, &c. when he comes with his Carts, Teams or other Carriages to carry away his Tithes, must not suffer his Horses, Oxen, &c. to eat and depasture the Grass growing in the grounds where the Tithes arise, much less the Corn there growing or cut; but if his Cattel (as cannot be avoided) do in their passage against the Will of the Drivers here and there snatch some of the Grass, &c. this is excusable.

C H A P XV.

The Fifteenth Chapter shews, to what Charges the Glebe lands belonging to a Rectory and the Tithes are Subject.

2 Inst. 641.
What Charges
Tithes and
Churchlands
are subject to.

SIR Edward Coke tells us, *Quod nullus pro decimis, quæ sunt Spirituales, de aliqua reparatione. pontis, seu aliquibus oneribus temporalibus onerari debet.*

That Tithes being Spiritual were not subject to temporal Charges at the Common Law.

2 Inst. 641.

And Sir Edward Coke is of Opinion, that at this day if Tithes be in the hands of temporal Men, they are by reason of them contributory to temporal Charges.

P. 5. Car. 1.

And upon a doubt of Mr. Justice Yelverton, who was Justice of Assise in the Bishoprick of Durham, as Sir Nicholas Hyde, heretofore Chief Justice of the Kings Bench, has reported, it was resolved by all the Judges of England, that Tithes are at this day chargeable with all charges imposed by any Act of Parliament, wherein they are not excepted, as upon the Statute of 43 Eliz. to the poor, and to maimed Souldiers, Kings Bench, Marshalsey, Bridges, &c. But they are

are not Subject to any Charges Temporal at, or by, the Common Law.

And so it was lately held by my Lord *Web.* vers. cheif-Justice *Hales*, and the Court of *Batchler.* Kings Bench, for watch and ward and *T. 1675. B. R.* repair of the High-ways; And this Case *per Hunt.* then vouched by the cheif Justice.

But Tithes at this day are Subject to pay Firstfruits or Annates, in Latine *Primitie*, which are the first years profits of every spiritual Benefice at a new Incumbents Entry into his Living; * they were ** Comel verbo Annates.* antiently exacted by the Popes of Rome, when they had small revenues to support the publick charge of his place: And *Polydore Virgil* tells us, *Ceterum nullum inventum majores Romano Pontifici cumulavit opes quàm annatum quas vocant.*

And *Polydore Virgil* tells us, that Pope *Polyd. Virgil. De Inventione rerum l. 1. c. 26. p. 498.* *Boniface* the Ninth first introduced them, though others ascribe them to *John* the 22d.

But some are of Opinion (and not without Reason) that Annates were much antienter then Pope *Boniface* the ninth, who entred upon the Papacy in in the year 1389. And *John* the 22. not till the year 1410. But it appears by our Parliament *Rolls* (which are Infallible Evidence) that this payment had rought *England* in the 25th. year of the Reign of *E. 3.* which was in the year of our Lord 1351. In which year there was a

T complaint

Rot. Parl. 8.
Par. 25. E. 3.
n. 13.

* Prebends I
Suppose.

Anno. 1376.
Rot. Parl.
n. 100.

Hist. wals.
p. 84. 45.

complainnt, made by the Commons in Parliament that the Pope had reserved to his own Collation, as well the Abbeyes and Priories, as also all other the great Benefices, whereot any Ecclesiastical or Religious persons had the Patronage; and that he had lately reserved all the Dignities in *England*, and the * Provenders in Cathedrall Churches, by which means the Pope had the First fruits of all the said Benefices. By this complaint it should seem the Pope had yet got in but one Leg, that is, to have the First fruits of those Livings! to which he himself collated a pretty piece of Symony;

In the 50th. year of the same King, the Commons renew their complaint again, and amongst many greivances from the Court of *Rome*, there complain'd of, one is, that the Pope's Collector that year (a thing never before done) had taken the First fruits of every Benefice whereof he made provision or Collation, whereas he was used to take First fruits only of Benefices vacant in the Court of *Rome*.

And if *Walsingham* say true, *summus Pontifex* (*Anno. 1316.*) *reservavit Camera suæ, primos fructus beneficiorum omnium in Anglia, per triennium vacantium.*

So that it is apparent, that in some cases First fruits were paid long before Boniface

Boniface the 9, or *John* the 22. but per-
haps the Popes before them had not
made it an universal payment.

These were often complained of, as a
great oppression upon the Clergy, as *Hen-
ricus Hostiensis*, who lived in the time of
Pope *Alexander* the Fourth, witnesseth;
but however upon the abolishing of the
Pope's Usurpations here in *England*, the
poor Clergy were not acquit of this ex-
action, but the same was by the Stat. of
26. H. 8. settled upon the then King and St. 26 8. H. c. 3
his Successors.

The Firstfruits are not here in *England*
rated at the full and utmost value of the
Living they are to be paid for, but accor-
ding to the valuation taken and made in
the said 26 year of King H. 8. and now
used in the First fruits Office.

And these Firstfruits are by a Statute
made 1 Eliz. not to be paid all at once, but
one quarter of them is to be paid at the end
of six months from the time of the Inducti-
on, Collation, &c. another fourth Part at
the end of twelve months, another fourth
part at the end of eighteen months, and
the last quarter part thereof at the end of
two years.

1 Eliz. cap. 4.

And by a Statute made 1 Eliz. all Vi-
carages not exceeding ten pounds, and all
Parsonages not exceeding ten Marks, ac-
cording to the valuation in the First fruits
Office, are discharged from the payment
of First fruits.

1 Eliz. cap. 4.

T 2

And

The Parsons Counsellor: Part II.

And if an Incumbent die, or be legally removed out of his Living without fraud, then after such death or removal, the remaining half yearly payments of the Firstfruits, which were not become due, are discharged by the said Statute of 1. Eliz.

And by that Statute the Dean and Canons of *Windsor* are discharged of the payment of Firstfruits.

St 26 H.8. c.

3.
When the Firstfruits are to be paid.

And by the Statute made in the 26th. year of H.8. before mentioned, *It is enacted, That every Archbishop, Bishop, Dean, Prebendary, Archdeacon, Parson, Vicar, &c. before he have any actual or real possession, or meddling with the profits of his Living (this must be between Institution, Collation and Induction) must pay or compound for, and give security for the payment of his Firstfruits, in the Firstfruits Office: And that an Obligation taken for the same should be of the force of a Statute of the Staple, and that if any such presume to enter into his Living before such payment or security given, or composition made, he is to forfeit double the value.*

But his Majesty and his Royal Predecessors have not been severe in this Case to take the penalty, but upon failure their Officers of the Exchequer have sent out Process to the Sheriff, to put the negligent Parsons, Vicars, &c. in mind of this duty, and upon coming in and paying the charge

charge of the Process, and paying or giving security for the Firstfruits, they are discharged.

But the Parsons, Vicars, &c. must be careful to pay in their half yearly payments, as the same become due, and take up their bonds, or else new Process will issue to the increase of their charge.

Perhaps some may be so curious that should desire to know, why Vicarages not exceeding ten pound should be freed of this charge, and Parsonages of ten marks should pay them: now the reason of that was, that the Vicarages in time of Popery, and when the Valuation was taken, had a great income by voluntary Offerings, which falling to little or nothing upon the dissolution of Monasteries, this favour was afforded them in their Firstfruits.

Why Vicarages are charged higher in the Firstfruits Office than Parsonages.

The next charge Parsons and vicars are subject to, are the Tenth, that is a tenth part of the yearly value of all their Church Livings; this payment was first exacted from the Clergy by the Pope about the twentieth year of E. 1. and a Valuation was then made by his authority of all Church Livings, at which rate the Pope was answered his Tenth, but he never had any Tenth of such Land as was given to the Church after that time. These payments (as appears by our Histories) the Pope of Rome sometimes granted

Tenth.

2 Inst. 628.

Stat. 25. H. 8.
cap.

Stat. 26. H. 8.
cap. 3.

ted to Kings of England, when the Kings pleased them, or rather when they feared their power; but upon the abolishing the Pope's power, which was in the 25th. year of H. 8. these Tenths were given to the King the year following by the aforesaid Statute of 26. H. 8. and to be paid at Christmas yearly, and the Bishop of the Diocess is to collect them, and they are to be paid according to the valuation taken the same year, and now in the First fruits Office, and are not paid that year the First fruits are paid, but are allowed out of them, because 'tis intended that the King has the whole years profit.

But immediately upon the Reformation many Clergy men scrupled, and denied to pay these Tenths to the King, being a duty properly due to the Pope; and therefore the refusal or neglect to pay them to the King, being certified by the Bishop *that had the Collection of them, is made a Cause of Deprivation not only of the Living, for which they refused to pay their Tenths, but also of all their spiritual Preferments.*

St. 26. H. 8. c.
3.

St. 2 & 3 E. 6.
c. 20.

But by the Stat. of 2 and 3 E. 6. that severity was moderated, so that now the refusal or neglect to pay them, and so certified by the Bishop, makes only that Living void, for which the Tenths shall be refused. But his Majesty and his Royal Predecessors have rarely put the severity of

this
105

this Law in Execution, but make out Proceſs in the Exchequer to compel the payment: however ſince the penalty is ſo great, every Clergy man ought to be very careful to avoid the danger.

An Aparitor came to a Parſon new inducted, and told him he muſt pay his Tenths to ſuch a perſon, naming him, at ſuch a day and place four miles off; and this was adjudged no good demand to make his Living void, within the Statute but ſuch demand which ſhall make a Living void within this Statute, muſt be poſſitive by one that hath power to demand and receive it.

More. 541.

There is a Proviſion made by an Act of St. 27. H. 8. c. 8. Parliamant in the 27 Year of H. 8. for thoſe Incumbents that ſhall be forced to pay the Tenths due in the time of their Predeceſſors, that they may levy the ſame upon any Goods they can find of their Predeceſſors upon the Church Living; and if they be not redeemed within twelve days after they ſhall be diſtrained, that then the ſame ſhall be priſed by two or three indifferent Perſons to be ſworn, and ſo many of them ſold as will ſatisfy the arrear with coſt; and if no ſuch Goods can be found, then the Succeſſor to take his remedy againſt his Predeceſſor, his Executors or Adminiſtrators, or others to whom his Goods ſhall come, by bill in Chancery, or in Action of Debt at Common Law.

The remedy where the Succeſſor pays Tenths due by his Predeceſſor.

Procurations.

Sir John La-
vies. Rep. 1,
2, 3.

*See more of this
matter Lind.
cap. ut singula
Ecclesiastica,
That by a Ci-
non made by
Steph. Lang-
ton about 1222
the Archdea-
cons were to
bring but se-
ven horses in
their Trains,
and stay but
one day, and
to invite no
body.*

31 H.8. cap. 13

*Cap. Quoniam
autem verbis u-
na tantum.*

There is another charge, to which the Parsons, Vicars, &c. are subject for their Church Livings, which is called Procurations or Proxies; and these are duties due and payable to the Bishops and Arch-Deacons at the time of their visitations, which are not paid by any certain Rule, but by some antient Taxation; for antiently the Religious Houses and Clergy-Men at their own charge entertained the Bishops and Arch-Deacons in their visitations, but at length their attendants were so many, and their trains so great, that the Clergy and Religious Houses were horribly oppressed with entertaining of them; to avoid which, the Clergy and Religious Houses came to this composition, every one to pay such a proportion to their visitors to be freed of that great oppression: & therefore the Canonists define them to be, *Exhibitio sumptuum necessariorum facta prelati qui Dioceses peragando Ecclesias subiectas visitant*, and this payment is continued to this day, not only of those Livings which are still enjoyed by the Clergy, but also of the Impropriations being saved by the Statute, of 31. H.8. and confirmed by the Statute of 34. H.8. and remedy given for them both with Costs, both in the Spiritual Court and at Common Law.

And note that if there be a Parsonage and a Vicarage indowed there is but

but one of them to pay procurations, but which of them must pay is to be directed by Custom, or the indowment, if extant.

Note likewise, that Donatives are not to pay procurations, because they are not within the visitation of the Ordinary; and so for free Chappels, for the same reason.

And if there be a Parsonage which has a Chappel depending on it, that is, where both are in the Parsons cure, no procurations are to be paid for the Chappel.

Cap. Qnam-
vis lex natu-
ræ.

Synodals is another charge upon the Parsons, Vicars, &c. and is likewise paid to the Arch-Deacon, not by any certain rule, but by some antient Taxation; so that some pay more, and some less.

Synodals.

I must confess I cannot find how this payment first became due, but by the name it should seem to be a contribution to the Archdeacon's charge in the Synods, they * being antiently elected by the Deacons themselves as their representative.

* St. Jerome
in his Epistle to
Evagius says
Diaconi ele-
gant de se-
quem in-
dustrium
noverint, &
Archidiacon-
um vocent.
† Dugdales
War. 126. b.

† But it should seem, that the Archdeacons claim these Synodals for their Easter visitation; and the Bishops have laid some claim to them, but, as my Author conceives, without any just reason, the Archdeacon and his Officers performing the Labour, and undergoing the Charge.

Since

The Parsons Counsellor: Part II.

Since my first publishing of this Book, a learned and worthy Divine sent me a Book, written by a learned and ingenious person amongst other things concerning Synodals, whereby he expected I might receive some satisfaction concerning the the Original and growth of them; at whose Candle I should thankfully have lighted mine own, if it had given a clear light: But when I came to read the Book, I found the Author indeavoured to prove them one and the same with the Cathedraical Duty, whose reasons to that purpose I can by no means subscribe to.

Cap. Qno-
niam autem
verb. onera
Ecclesiastica.

First, because Mr. *Lindwood*, a very learned Civilian and Canonist, reckoning up the *onera Ecclesiastica* tells us, *Quedam enim sunt que dicuntur Episcopalia, & inter hec continentur Synodaticum, Cathedraicum, &c.* so that it appears he conceived them two several and distinct charges,

Causa 10. q. 3.
Quid vero &
placuit ut
nullus & Con-
cil. Braca cap.
2.

Secondly, the *Cathedraicum* is by the Canons restrained not to exceed two shillings, and whereas antiently the Bishops had a third part of the Offerings, and in consideration thereof were to repair the Churches; they had this payment in consideration of the third part of the Offerings, and were acquitted of the repair of the Churches. But I could never learn that the *Cathedraicum* was e-

ver

ver paid in *England*: and the reason may be, because the Churches in *England* have always been repaired by the Parishioners by custom. Now the *Cathedraicum* being limited to two shillings, and finding upon inquiry that the Synodals are not confined to any certain Sum, but for the most part more than two shillings; it is very improbable that they are one and the same.

Thirdly, the *Cathedraicum* is annexed to the Bishops Chair, and in recompence of a duty not transferred to any other, but for ought I could ever learn, the Synodals have been always paid to the Arch-Deacons: and therefore for these reasons I take them for several and distinct Duties, as *Lindwood* seems to take them.

The same Author gives an account of some difference that has been moved between the Archdeacons and the Clergy, whether Procurations are due to the Archdeacons when the Bishop visits: in which case the same Author has given his Verdict clearly for the Archdeacons, and grounded his opinion upon reason, custom and authority.

First, his chief and only reason is, because the Archdeacon pays his tenths as well for that year the Bishop visits, as for the other two; and therefore he concludes it very reasonable he should have

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have that for which he pays Tenths.

But I conceive there is a great mistake in this Argument, for I am not satisfied the Archdeacons pay any tenths for their procurations, but for the Corps annex to their Archdeaconries and their jurisdiction; for it were against reason to charge them to pay tenths for that they ate and drunk in their visitations, and the tenths ought to be of the clear profit.

But admitting upon the valuation in the 26 H. 8. the procurations were valued (for in that of 20 E. 1. they could not be valued, not being then reduced into Money, nor of long after) then the Argument runs no farther, than that, because the Archdeacon pays a tenth part against reason, therefore the Clergy must pay the whole.

But the reason against the Archdeacons in my judgment is much stronger. I shall not take upon me to examine whether their Jurisdiction be ordinary or delegated; I will admit Custom has made it in some measure ordinary, though much might be said against it, I will let that point pass unquestioned, but from the beginning it was not so. But let that be as it will, it is clear there was no Jurisdiction annex to Archdeaconries originally, the first step was over the Deacons, as shall be shewed hereafter

after: It is without all doubt, that Originally all Jurisdiction over the Clergy was in the Bishops, and they in their own persons visited the Churches within their Diocesses, for the first 600 Years after Christ.

4 Concil. To-
letan. cap. 35.
2 Concil. Bra-
ca cap. 1.

But in the Fourth Council of *Toledo*, which was held about the 630th Year after Christs Birth under *Honorius. 1.* It was decreed, *Episcopum per cunctas dio-ceses parochiasq; suas per singulos annos ire oportet; what to do? not only to eat and drink, but ut exquirat quo unaqueq; Basilica in reparatione sui indigeat. But si ipse aut languore aut aliis occupationibus implicatus id explere nequiverit, presby-teros probabiles aut Diaconos mittat, qui & redditus Basilicarum & repara-tiones & Ministrantium vitam inqui-rant.*

This is the first Commission that I can find for Bishops to make substitutes to inquire, but the Jurisdiction still reserved to the Bishop to admonish, examine, and punish; but here is no news of Archdeacons as yet in power.

The first news I hear of any thing tending to any *Jurisdictionem* was over the Deacons, for *Gratian* tells us, *Archidiaconus Subdiaconis & Levitis ad quem ista pertinet Ministeria. Et ad ipsum nuntiat Episcopum excessus Diacono-rum; So that it seems the petit Juris-diction*

Distinct. 23.
per lectis.

diction the Archdeacons begun with was to inspect the behaviour of their Brother Deacons, and to give the Bishop an account of their miscarriages in the nature of a Monitor only.

Distin^d. 94.
dictum est.

The next news I hear of them is a complaint against them, *Quod in ple-risq; locis ipsi super Presbyteros quandam exercean dominationem*: but staid not there, but *ab eis censum exigunt*; (which the Bishops could not do) whereupon it is commanded, *quod sint contenti regularibus disciplinis, & teneant propriam mensuram quam ab episcopis eis injungitur, hanc per parochias suas exercere studeant, nihil per cupiditatem & avaritiam presumentes*. Here it appears they had gained some imployment under the Bishop over some certain Parishes, but with a limited Jurisdiction; they must keep their measures, must not exceed their bounds.

Hob. 16.

Ergo dicun-
tur oculi E-
piscopi.

By this it appears that the Archdeacons are meerly Substitutes to the Bishop, and what authority they have is derived from him, his chief Office being to visit and inquire, & *Episcopo nuntiare*; and therefore the Bishop takes what causes he pleases to his own cognizance, and leaves some petit business to the determination of the Archdeacon. This being granted, which cannot be justly denied, it is against all the reason in the world,

world, that the Bishop by easing of himself by appointing a deputy Vicar or Vicegerent should double the charge upon his Clergy.

As for the Custom alledged for this duty, before I give an Answer to it, it will be necessary to examine how the Canon Law stands in the point.

And by our own Provincial Canons I find it is especially provided, that the Archdeacons should receive no Procurations, *nisi illo die quo personaliter visitant Ecclesiam procurantem*; and it goes further, *nec redemptionem pro visitatione præsumant*. What can be more clear? and what can this redemption mean, but Procurations in Money as is now used?

And the Gloss, to make still more clear, Verbo visitatione, tells you, *forſan quia Episcopus eodem Anno visitavit & ſuspendebat Jurisdictionem Archidiaconi, & ſic Archidiaconus vult ab eis aliquid loco procurationis exigere quod non licet, ut hic, ubi non visitavit.*

And by another Canon made by John Stratford Archbishop of Canterbury and his Clergy, about the year 1345. it is forbidden. *Ne quis procurationem ratione visitationis ſolvendam ab aliqua præſumat recipere Eccleſia, niſi visitationis officium diligenter eidem impenderit, ſcrutatis*

Cap. et ſingula Eccleſiaſtica.

Cap. Quamvis lex naturæ.

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scrutatis personalis & inspectis per ipsum cum effectu quæ fuerint indagandi.

Ibid. verb.
ratione visi-
tationis.

By this Canon likewise there's no procurations to be paid without personal visitation, but for the better understanding of this Canon I must observe to the Reader that there is two other sorts of procurations, the one by Pact or Covenant, the other by Custom, that are no ways related to visitations, and therefore the Canon well distinguishes, *ratione visitationis*.

And after that Canon has taken care for moderating the excessive charge of the visitors in their visitations, it leaves it to the choice of the visited. *An in pecunia quantitatis solite, vel in victualibus visitantes eosdem voluerint procurare, optionem reservamus.*

Verb. solet
solvi.

And Mr. Lindwood tells us in those days it was a common use in England, that the Archdeacon received in Money, *nomine procurationis* Seven shillings and Six pence, that is, Eighteen pence for himself and his Horse, and Six shillings for his Six Attendants and their Horses.

There is by the same Canon provision made, that where there is a Church and a Chappel depending of it which is not presentable, but within the charge and cure of the Parson, that in that Case there shall be but one procuration for both,

both, and that he that shall take more, shall *ipso facto* be suspended *ab officio & beneficio*, till he has paid double the Sum received to the Cathedral Church of that Diocefs.

Lastly, this Canon concludes with the Duty of the Archdeacon and other Ordinaries in their visitations, that *tam in Ecclesiis quam ornamentis eorum, cæmentiorum clausuris & mansorum domibus reperientes defectus, iis sub pæcuniariis pænis præcipiunt reparare, &c.*

So it appears by these Canons, that there is no procurations due to the Archdeacons, unless they visit *personaliter*; and if it be demanded, why, in person? and why *Ecclesiasticum*? the close of this Canon tells you.

Now you shall hear what *Othobon*, the Pope's Legate, in a national Synod held in St. Paul's London in May 1268. says to this matter, *Cum autem* (says he) *ratione visitationis procuratio debeatur, si quid exequatur vel recipiatur huiusmodi ratione cessante, jam male recepti & indebiti nomen sublit. Cum igitur intellexerimus quod pleriq; prelati procuraciones à subditis exigunt, licet visitationis Officium non impendant, nos tam Ecclesiarum indemnitati quam* * *prelatorum saluti consultius providentes, districtius inhibemus, nequis eorum procuracionem, quæ ratione visitationis debetur,*

Nota.

ab Ecclesia quacunq; recipiat, nisi cum eadem visitationis officium impendit; qui vero receperit, donec restituerit, ab ingressu Ecclesiae sit suspensus.

So that it appears by these Canons, the Archdeacon, when the Bishop visits, ought not to have procurations, but is expressly forbid to exact them. Now how far a Custom shall prevail against a Canon (I mean such Custom as the Ecclesiastical Courts allow of forty years continuance) belongs to the determination of the Canonists. And the Author tells us, page 25. from them, that that Custom is said to be *rationabilis*, and by consequence *inviolabilis*, that is binding, *Quae nec diviso juri contradicit nec obviat canonicis institutis.*

I could say much more to this purpose; but it belongs to the Canonists, to whom I leave it.

But if the Author intend such Custom as is allowable at Common Law, when he says Canons cannot be of such force as to annihilate and overthrow national Laws and Customs, I must grant he is therein very right.

But in this Case there can be no such Custom; for every Custom allowable at the Common Law must have its commencement before the first year of R. 1. which was, *Anno Domini 1189.* but the Decree of Pope *Benedictus XII.* which

which first gave way to commuting procurations into Money *Volentibus*, was about the Year 1337. and Money-payments in lieu thereof were not settled here in *England* of long time after; and therefore they cannot be claimed by any Custom or Prescription at Common Law.

For the Case of *Proxies* in *Ireland*, which he vouches forth of Sir *John Davies* Irish Reports, I conceive makes nothing at all to this question; for it is not at all moved in that Case, whether there were a double *proxie* due, the one to the Bishop when he visits, and another to the Archdeacon that sits still: But I presume the Author makes use of that Case to prove, that procurations may be due *ratione visitationis*, when there is no visitation; And I will agree, they may by Act of Parliament; and in that Case, there is two Acts of Parliament for them.

But Sir *William Capels* Case vouched Co. 4. in *Lutterels* Case may be conceived to make something to this purpose, where the Case shortly is, that one held his Land *inter alia* by the Rent of Five shillings *pro wardo castri*, and upon avowry for this Rent, the Tenant pleaded that the Castle was down, and therefore no Rent due, and upon demurrer adjudged against the Tenant: and very great rea-

son, for the Rent was reserved in respect of the Land, and not in respect of the Castle; for the reservation of the Rent is *Reddendum inde*, that is, for the Land Five shillings *annuatim pro wardo castri*; and the saying the Castle is down does not answer the *debet*, but if the Land for which the Duty arises be evicted by a more antient Title, the Rent is gone: so that this Case being rightly understood makes against the Archdeacons rather than for them; for in their Case the annual payment is paid for procurations. Procurations are due, *ratione visitationis*; then when the Bishop that has the antienter right to visit inhibits his Deputy, and does the work himself, to whom does the wages belong?

Here I could willingly end my discourse, for I doubt I have said enough to displease some: but no good Man ought, nor I hope will take any offence at what has been said, or at what I am about to say; and therefore I shall add a word or two concerning the Archdeacons and their visitations.

Concil. Tole.
can 4. cap. 35.
& Braca cap.
7.

It appears by what has been said, that for the first Six hundred Years after Christ, the Bishops in their *umo* persons visited, *cunctas dioceses parochiasq; suis singulos annos*, and they had

Seven

Seaven Deacons in every City, that is, Diocess to assist them. After that they had Authority in case of sickness, or other publick concerns, to delegate Priests or Deacons to assist them: and hereupon, as should seem, they cantonized their great Diocesses into Archdeaconries, and gave them Commissions to visit and inquire, and to give them an account of all at the end of their visitations, as is before related; and the Bishops reserved the third year to themselves to visit their Churches, and thereby to inform themselves how the Archdeacons, their substitutes, performed their duties, how they domineered over the Clergy, and were reduced to their true measures. You have heard after upon complaint of the oppression, they and others used in their visitations by their excessive numbers of Attendants, in one of the Councils of *Lateran* the number of their Attendants were limited, and by Canons of our own several restrictions have been made against the exorbitances of visitors.

By one Canon in the time of Archbishop *Langton* they are commanded, that in their visitations their Attendants shall not exceed the number limited in the general Council of *Lateran* (whereby an Archbishop in his visitation is allowed Forty or Fifty Men

Dist. 94.
dictum est.

Cum Aposto-
lus.

Ut singula
Ecclesiastica.

Cap. cum A-
postolus.

and Horses, a Bishop Twenty or Thirty, Archdeacons Five or Seven, an Archpriest Two.) And further restrained the visitors, that they should invite no body to their visitation entertainments.

Quamvis lex
nat. r.

But this did not do the work intended in ealing the Clergy; therefore after in the time of Stratford Archbishop by the Canon before remembered it is further provided, that if any *plures visitare voluerit Ecclesias una die, procuratione unica in victualibus vel pecunia, ad quam omnia & singulas sic die unico visitatas proportionabiliter faciat contribuere, prout tradunt Canones, sit contentus. Et si nocte precedente visitationem in quavis Ecclesia faciendam ad sumptus Rectoris seu vicarii visitandi, seu die visitationis in prandio steterit, cum eisdem veram estimationem sumptuum hujusmodi in procuratione, si eam in pecunia visitans licite duxerit exigendam, computare, seu allocare, vel pro ea in toto studeat compensare. Ita quod nec ultra sumptus hujusmodi solidam procurationem in pecunia, nec amplius quam deductis eisdem sumptibus de procuratione in pecunia exsoluenda supererit, presumat recipere vel exigere quovismodo. Si quis autem aliter fecerit, donec indebitè recepta restituerit, ab ingressu Ecclesie noverit se suspensum.*

And

And likewise by the beforementioned decree of *Othobon* it is ordered, that Bishops and other inferior Officers in their visitations, *in superflua comitiva. seu electionum numero, vel alias in expensis gravare subditos non presument ultra quantitatem & numerum determinatum in constitutione Innocentii Papa quarti, ne, &c.* Naturalis dispositionis.

But Pope *Benedict* the XII. good Man, made an Edict or Constitution decretal, whereby he settled what every Clergy-man, &c. should pay by way of commutation in lieu of their procurations, and this was about the Year 1337. But the good Pope left it in the Election of the visited, whether they would pay their procurations in Money or victuals: but it was long after, as should seem, before this Decree was generally received in *England*; (which makes me believe the Archdeacons were more moderate here than elsewhere.) For when *Lindwood* published his Provincial Canons, which was about the Year 1423: it was not generally received in *England*, which was almost a hundred Years after. But the certain time that Procurations here in *England* were turned into Rent I cannot find out: But the effect of this innovation was, that when Procurations were reduced to an annual Rent, the visitations were degenerated into an *Audit*

of receipts, and call'd it a visitation where the Parson draws up a thing called a Presentment containing (*omnia bene*) which by the Church-wardens is delivered to the Visitor or his Deputy, and Procurations paid, and the Visitation is ended; when for the most part nothing is well, or as it should be: The Churches kept like Swine-styes (I beg pardon for the comparison, I wish it were not too true) the Floors broken up, the Windows broken down, the Church and Buildings belonging to the Parsonage and Vicarage Houses dilapidated, the Parson *non resident*, Pews in the Church built so high and disorderly that the behaviour of the People therein cannot be observed, Books and Ornaments of the Church wanting or imbecelled; and it is not likely the Parson and Church-wardens should present these things, when themselves are commonly most in fault; and besides the Churches, the Church-yards how are they used, their Fences neglected, Swine rooting in them, muck heaps thrown in them, and profane gaming and other debaucheries used in them, shame to see or hear of?

Causa 1c. q. 1.
Relata est.

There was complaint in the Council of Toledo, *Quod quidam Episcopi negligebant suas parochias visitare singulis annis ad predicandum & ad confirmandos pueros, procuraciones tamen exigebant, ac si Ecclesias*

clesias visitarent : quod ex avaritia & negligentia procedat. Therefore it was decreed in that Council, *ut hoc de cetero non faciant Episcopi, sed solcite & diligenter greges visitent, cupiditatem vitantes, & negligentiam dimittent.*

Certainly if there was cause of such complaint in those days, there is much more now.

I do not speak this, as though it were now a Duty incumbent upon the Reverend Bishops to visit in person *Ecclesiastim*; their age and great employments, and the Canon gives them leave to do it by their Substitutes the Archdeacons: but if their Lordships would be pleased to enjoyn their Archdeacons to visit every third Year *Ecclesiastim*, when their Lordships hold their triennial visitations, and give their Lordships a personal account how they found all things, it would work a great reformation in the miscarriages beforementioned; and the Archdeacons would certainly be ready to obey such a command, *Nè magis videantur lucris pæcuniaris initiare, quam Ecclesiarum velle conservare statum, & salutem animarum querere*; and then it were reason they should have their Procurations that Year also.

Othobon cap.
naturalis dis-
positionis.

The same worthy Author that has brought me into this discourse tells us of another charge by the name of *Pentecostals*,

costals, or *Whitsunday* Farthings; these are but a charge upon some particular Churches, where by Custom they have been paid, and seem to be of the nature of offerings: But I have never met with any thing more of them, than what I have received from that learned Author.

4 Concil. To-
let. c. 37.

Lastly, I will conclude with an accidental, but a grateful charge, which is, That if the Founder or Benefactor to a Church, or their posterity, becomes necessitous, they are from the same Church to receive relief. *Si enim omnibus aliis (says the Canon) necessitatem sustinentibus pro solo religionis intuitu in usum res Ecclesie largiuntur, quanto magis consulendum est, quibus retributio debetur?*

All these charges and more the secular Clergy undergoes, which takes away a considerable part of their Revenues.

C H A P. XVI.

The Sixteenth Chapter shews, how far prescription will prevail in the manner of Tithing, and in what Cases the Parson, Vicar, &c. shall be bound by a modus decimandi,

THE Canonists, and those that are of opinion that Tithes are due *jure divino*, decry all Customs and Prescriptions that either diminish the tenth part, or acquit the whole: for in truth, no Custom or Prescription can be good which is positively against the Law of God.

And that is the reason why it is frequently said in our Law-Books, that the Ecclesiastical Courts will not allow a *modus decimandi*.

But the Common Lawyers allow Tithes to be due *jure Divino secundum quid*, that is, *quoad sustentationem cleri*, but not *quoad decimam aut aliquam aliam certam partem*; and therefore they allow of a manner of Tithing which diminisheth the *quantum*, or a Custom of not Tithing for this or that particular thing, so there be a sufficient maintainance for the Clergy besides: and of the same opinion are some of the most eminent School Men. And in this,

The force of a modus decimandi in Tithing.

Lindwood cap. *Quoniam propter verbo redemptionem.*

Co. select cases. 46.

Common Law and Canon differ concerning Customs, &c.

Tho. Aq. Sum.
2.22. q. 87. 1.0.

St. 25. H. 8.
cap. 19. Fine.

*The difference
between Cu
stom and Pre
scription.
The Common
Law vindica
ted.*

Lindwood c.
*Quoniam prop
ter verb. Re
demptionem.*

this, as in all other things where the Common Law, and Canon, or Ecclesiastical Laws differ, the Common Law is to be preferred; for no Canons are of force in *England*, which are contrary or repugnant to the Laws, Statutes and Customs of this Realm, or to the damage or hurt of the Kings Prerogative Royal; but all other Canons Provincial still remain in force, and are confirmed by a Statute made in the 25th Year of H. 8.

The difference between Custom and Prescription I have shewed before in the thirteenth Chapter.

But before I proceed upon this Subject, I must beg leave of the Reader to say something more in vindication of the Common Law, which in this point I conceive does not differ materially from the Ecclesiastical and civil Law; for if I do not very much mistake the Canonists and Civilians, they do at this day allow of real compositions in discharge of Tithes, that is, where the Parson, Patron and Ordinary do by deed agree to accept of a certain Sum of Money yearly, or so much Land or other profit in discharge of the Tithes growing and arising upon such Lands as they agree for. Now what is this but a *modus decimandi*? and a prescription to maintain this *modus* is no more, than a supply

to prove a real composition, which was made beyond all memory and lost; and it were against all justice and reason that if a Man should be plundered of, or lose his Deeds, that he should thereby lose his Estate. And it must necessarily be intended, that every *modus decimandi* that has continued time out of mind, must have a reasonable and legal commencement, and must be intended that it began by a real composition.

Seld. hist. Decim. 408.

A Rent charge cannot be created but Deed, and yet it may be claimed by prescription, supposing a Deed preceded: the like Law is of all Commons, &c.

Sir Thomas Ridley, a learned Civilian, P. 181. in his view of the Civil and Ecclesiastical Laws, inveighs against Prohibitions, and the Common Law in Cases *de modo decimandi*; and endeavours to insinuate to the Reader that the Spiritual Courts allow Prescriptions *de modo decimandi*, and that the Common Lawyers do the Spiritual Courts great wrong to affirm the contrary. But he himself in the next precedent Section tells the Reader that a Prescription to pay less than a full tenth part, is both against the Canon

Lindwood cap. Quoniam propter verbo redemptionem.

Consuetudo nec prescriptio juvat Laicos quoad decimam præscribendum vel retinendum. cap. Quoniam ut audivimus verb. consuetudine locorum quod Laici minus solvant quam decimam, non potest consuetudine introduci, quia esset contra jus divinum.

Law

Law, and against the Law of God it self. Now in every Prescription *de modo decimandi*, it is to be intended the rate Tithe was the full value of the Tithe at the time of the Original composition; for it cannot be presumed that the Bishop, Patron and Ordinary, would make a composition to the prejudice of the Church; and if the rate Tithe do not now reach the value, it is to be intended that either the Tithes are improved, or else that Money is now become of less value which makes the present inequality.

Put the Case then, that in the time of H. 1. (for the purpose) the Lord of the Mannor of *Dale* made a real composition with the Parson of *D.* that he or his Heirs for ever, then after would pay to the Parson and his Successors Five pound yearly, for the Tithes of his Demesns; and this composition was confirmed by the Patron and Bishop as it ought, and Five pound was the full value of the Tithes at that time. I think it will not be denied me but this was a good real composition, and that if afterwards the Tithes had become of less yearly value, the Lord of the Mannor had been bound by the composition to pay the Five pound *per Annum*; then suppose on the other hand, that the Lord of the Mannor after this composition being thereby encouraged, made great improvement

of his Demefns, by which the Tithes are become of much greater yearly value, or that Money by the discovery of the *West Indyas* (as the truth is) be become of less value: is there not then the same reason to bind the Parson, as to bind the Lord in the other Case? which being granted, as in all Justice and reason it must: and the Lord having no other evidence to make good his bargain but his composition, and that in the late Wars was plundered, or his House, and that by accident burnt, mislaid or imbevelled; shall he therefore lose his composition which he must now be forced to claim by Prescription (his composition being lost) because the Tithes are of greater yearly value than Five pound, as the Civilians would have him, or shall he be admitted to maintain his right by the Common Law. I appeal to the judicious and indifferent Reader which is more just? Now the Judges of the Common Law well knowing what the Judges of the Ecclesiastical Courts will do in this Case, and likewise that at this day there is no rate Tithe can come near the true value of the Tithe Wheat about the time these compositions were made, not being perhaps above Twelve pence or Two shillings a Quarter, and now for the most part twenty times as much. (not because Wheat is of greater value

value than it was, but because Money is of less they do in this case frequently grant Prohibitions to try whether there be such a Custom or no: and if they find there is no such Custom, they send the Cause back by consultation to the Ecclesiastical Court to be there determined; but if they find there be such a Custom, they will not trust the Ecclesiastical Judge any more with it, but leave the party to take his remedy for the *Modus* in the Ecclesiastical Court. And for the very same reason Prohibitions are granted upon real compositions. And by the Ecclesiastical Laws Tithes are due of Minerals, Turfs, fishing in the Sea, &c. which the Common Law denies; and therefore if Suits be in the Ecclesiastical Courts for any of these things which are due by the Spiritual, but not by the Common Law, the Judges of the Common Law do grant Prohibitions to stay their proceedings.

Lib. 2. cap. 55.
f. 167. a.

And *St. German* in the Doctor and Student puts this Case, that if it were ordained for a Law, that all payment of Tithes from thenceforth should cease, and that every Curate should have a certain Portion of Land assigned to him, or a Rent or Annuity which should be sufficient for his maintainance and those that served under him, or that every Householder should give a certain sum to that use,

use, that this were a good Law, and grounded his opinion upon this saying of Doctor Gerson a great Doctor in Divinity, *Solutio decimarum sacerdotibus est de Jure Divino quatenus inde sustententur sed quoad tam hanc vel illam assignare, aut alios in alios redditus commutare, positivi juris existit.*

And this commuting Tithes into annual Salaries is frequently practised in the Protestant Churches beyond Sea, as I have been informed.

And these Prescriptions *de modo decimandi* are not only allowed by the antient Common Laws of this Realm, but confirmed by Act of Parliament.

Prescriptions are confirmed by Parliament.

For by the Stat. of 2 E. 6. it is enacted, that no Person shall be sued or otherwise compelled to yield, give or pay any manner of Tithes, for any Mannors, Lands, Tenements, &c. which by the Laws and Statutes of this Realm, or by any Priviledge or Prescription are not chargeable with the payment of any such Tithes, or that be discharged by any composition real. And having said thus much in vindication of the Common Law, I shall proceed to shew what Prescriptions and Customs, *de modo decimandi* vel *de non decimando* are good and allowed at Common Law.

Stat. 2.E.6, cap.13.

First, no Lay-Man can prescribe in *non decimando* that is, to be discharged absolutely of the payment of Tithes,

Who may not prescribe in non decimando.

Seld. hist. de-
cim. 409.
Rolls 1. 653.
H.

*Who may pre-
scribe in non
decimando.*

Rolls 1. 653.
H. 3. 5.

Rolls 1. 653.
H. 6.
*Church War-
den not.*

Rolls 1. 653.
H. 7.
*A Clergy Man
may prescribe
for himself and
Tenants.*

Rolls 1. 653.
H. 4.
Co. 2 45. a.

and to pay nothing in lieu thereof un-
less he begin his Prescription, in a
Religious or Ecclesiastical Person,
and derive a Title to it by Act of Par-
liament.

But all Spiritual and Religious Persons,
as Bishops, Abbots, Priors, Deans, Pre-
bends, Parsons, Vicars, &c. may pre-
scribe in *non decimando*, and their Farmers
may make use of such Prescriptions to
free themselves from the payment of
Tithes.

And hence it is, that the Parson or Vi-
car of one Parish, that hath part of his
Glebe lying in another Parish, may pre-
scribe in *non decimando* for it, that is, as
hath been said, to be free from the pay-
ment of any manner of Tithe for
it.

But Church Wardens who have Land
belonging to their Churches cannot pre-
scribe in *non decimando* because they are
neither Religious nor Spiritual Per-
sons.

It hath been held that a Bishop may
prescribe that he and his Tenants for Life,
Years, and Will, and his Copyholders
have been freed from the payment of
Tithes, the reason alledged is, because
it might commence by a real composi-
tion for the whole Mannor. And in all
Cases where a Spiritual Person pre-
scribes in *non decimando* his Tenants
and

and Farmers shall take the benefit thereof.

But if any of the Abbots, Priors, &c. Stat. 27. H. 8. that came to the Crown by the Statute of cap. 28.

27 H. 8. were discharged of the payment of Tithes by prescription *de non decimando*, yet the Patentees of these Lands shall not have the benefit of such Prescriptions, but shall pay Tithes.

Rolls 1. 654.
J. 1. contra.
Hob. 309.

Neither can the Kings Patentee be freed from the payment of Tithes of those Lands which the King whilst he had them in his own hands prescribed to be freed from the payment of Tithes, because it is a Personal discharge in the King, for the question arising upon Lands disafforested, there might be several reasons why he paid no Tithes, first, because the grounds were depastured with Beasts *feræ nature* for which no Tithes were due, or for that the King was not bound by the decretal Epistle of Pope *Innocent* the third, who settled the Parochial right of Tithes, or by reason the King being a mixt Person might prescribe *in non decimando*.

Rolls 1. 655.
l. 2.
Patentee del
Roy.

Cro. Car. 94.
Dubitatur,
Ideo quare.

But the Kings Patentees of those Abby Lands that came to the Crown by the Statute of 31 H. 8. may take advantage of a Prescription *de non decimando* in the Abbot, Prior, or other Religious Person by the force of that Statute, and the enjoyment of the Lands since the dissolu-

A Country may
prescribe in
non deciman-
do.

Lib. Intr. tit.
prohibir.

Co. 2.44.b.

Doct. and St.

l. 2. c. 55. f. 166,

167. b.

174. b.

Roll 1. 653.

H. 10, 11, 12,

13.

Who may pre-

scribe de mo-

do decimandi

Co. 2.44.2.

b.

Cro. El. 599.

758. 784.

Cro. El. 784.

Noy. 132.

Hob. 40. 41.

A modus to
pay two things,
and one fails.

tion freed from the payment of Tithes during memory, is a good proof *à posteriori*, that the Abbots, Priors, &c. held the same discharged from the payment of Tithes.

The Inhabitants of a County, Hundred, or Country, as the wilds of *Kent* and *Sussex* may prescribe not to pay Tithes of Wood, Milk, or any other particular thing, so there be a competent Livelyhood for the Clergy besides.

But every Lay-Man may prescribe *de modo decimandi*, That is, that such a Man being Lord of such a Mannor, and all those whose Estate he hath in the said Mannor, have from the time whereof the memory of Man is not to the contrary, had and enjoyed to his and their own uses all the Tithes arising, &c. within the said Mannor, paying so much yearly to the Parson of *D.*

And a Lord of a Mannor may prescribe for himself, and his Copyholders, for they are part of the Demesns of the Mannor; or the Copyholder may prescribe in the name of his Lord.

If a *modus decimandi* be to pay two things, as two shillings for a Park, and a shoulder of every Buck kil'd in the Park, and all the Dear die or are kil'd up, yet notwithstanding the Prescription holds good for the two shillings.

But

But every Prescription and *modus* must have a Continuance, for it cannot be good at one time, and asleep at another, neither can a wilful denial destroy a *modus decimandi*: and it is taken for a Rule in Dr. *Leyfield* and *Tisdale's* Case, that where no Tithes are regularly and legally due, as for a House, &c. there can be no *modus decimandi* alleged.

Hob. 43.
Prescriptions must not sleep.

Hob. 11.
Modus for Houses.

And yet it hath been held, that a Tithe by prescription may be paid for a House; because it might be due for the Land before the House was built. *Ideo quare.*

Co. 11. 162.
Hob. 11.
Quare.
Roll 1. 640.
b. 5.
Hob. 107.
* Roll 1. 651.
d. 16, 17, 18,
19.
Cro. El. 446.
Co. *Select Cases* 45.
Mole 454.

A *modus* to pay Tithes without the view of the Parson is not good, because it conduces to fraud, and is now against an Act of Parliament.

So a *modus* that because you have paid your Tithe of your Cows, you have been freed of the Tithes of Oxen, Steers, Heyfers, &c. is not good, That is, to pay your Tithes in kind of one thing, thereby to free another Tithe.

And it hath been held a void prescription to pay a Load of Hay yearly in discharge of all his Tithe Hay, that is to pay a part in discharge of the whole.

Cumberlands Case.
per Roll. P.
13. Jac. B.R.
What Prescriptions de modo decimandi.
2 Leo. 7c. are good.

So for a Parishioner to prescribe that he, &c. has time out of mind repaired the Church, and by reason thereof hath

Roll. 1.649.
d.8.9.

been discharged of the payment of Tithes, is no good Prescription, for the Parson not being bound to repair the Church has no recompence, but if it had been, that he had repaired the Chancel, and in consideration thereof had been freed of the payment of Tithes, that had been a good *modus, ratio patet.*

Wool and
Lamb.
Roll 1. 648.c.
1.649.d.7.

It hath been held a good Prescription, that the Parishioner hath time out of mind paid the Tithe Wool of all the Sheep he has shorn, though never so lately bought in, and in consideration thereof hath been freed of the payment of the Tithes of those he had sold before Shear-day.

Roll. 1.648.
c.4.

It hath been held a good Prescription to have paid the Tenth Fleece or Pound of Wool, so there were any allowance for the odd Fleeces or odd weight.

Roll. 1.649.d.
5.

It hath been adjudged a good *modus*, that in consideration the Parishioner hath shorn and wound the Wool, to be free of paying Tithes of the neckings and birlings without fraud.

Roll. 1.652.
8.1.

It is a good Prescription, that the Parishioner hath time out of mind paid a halfpenny for every Lamb sold before *Mayday*, but if the Parishioner sell his Lambs fraudulently a few days before *Mayday* on purpose to defraud the Parson, &c. it is no good discharge.

A Prescription to pay Wool in kind, if Marsh. 79.
kept till Clipping day, but if sold before,
to pay a halt penny a fleece, as Mr. Marsh
reports, was held no good Prescription,
tamen quere.

It hath been held a good *modus*, that in *For Corn.*
consideration that the Parishioner hath *More 454.*
mowed, reaped and shokt the Corn, and
paid his Tithe in the shock, that he hath
been freed of the payment of any Tithes
of the Rakings, but as Sir Edward Coke
says, there needs no *modus* as to Rakings
without fraud.

To prescribe to have paid the Tenth *Roll 1. 648.*
sheaf or shock as it falls out, is no good *b. 6.*
Prescription to free the Parishioner of a-
ny other Tithe, it being no more than is
due.

A *modus* that in consideration, that the *Roll 1. 649.*
Parishioner hath sowed, reapt, bound and *d. 4.*
set up the Corn one year to be free from
the payment of herbage the next year of
the same Land was held good, *tamen qua-*
re inde.

But it is no good consideration, that *Roll 1. 650.*
in consideration the Parishioner has plow- *d. 11.*
ed, sowed, mowed, cockt and set out the
Tithes of part, that therefore he should
be freed of paying Tithes of a small par-
cel left standing.

A man may prescribe to pay the *Wood*
Tenth Acre or Rood of wood standing, *Roll 1. 648.*
and the Parson, &c. cut it himself, as *b. 7.*

*Calves and
milk.*

Rolls I. 648.
c. 2.

Roll I. 651.
d. 19.
Cro. El. 509.
786.

Roll I. 651.
d. 17.

Roll I. 651.
d. 18.
Eggs.
Roll I. 648.
c. 3.

*Land in lieu
of Tithes.*

Roll I. 649.
d. 6.
Cro. El. 587.
8 E. 4. 14. 3.

*Headlands,
Balks, &c. and
Hay.*

is used in some parts of *Lincolnshire*.

It hath been held a good *modus* to pay one Calf at seven, and if under, a half penny a piece, and if he sell any Calf to pay the tenth part of the price, and it hath been held a good *modus* to pay Tithe Cheese from *Mayday* till *Michaelmas* to be discharged of the whole Tithe of the Cows, and no Tithe is due for Cheese but by Custom, and the labour of milking and making into Cheese is added, whereas nothing but the Tithe of milk is due by Law.

But it is no good *modus* to pay for every milch Cow Two pence, and for every Calf One penny, in discharge of the Tithes of all other Cattel, but it is a good *modus* for the Calves and milk only; so a *modus* to pay a Tithe-Calf in satisfaction of the Tithe of all manner of Cattel is not good.

A *modus* to pay thirty Eggs in Lent in satisfaction of all the Tithe of Eggs has been held a good *modus*.

It is a good *modus* that the Parson time out of mind hath had so much, or such a parcel of Meadow or Land in satisfaction and discharge of all the Tithes of Hay, &c. arising upon such Land.

It is no good *modus* to be free from the payment of Tithe Hay arising upon Hades, Balks, Greenslips, or Doals eaten

eaten by Beasts of the Plow, in regard the Parishioner hath sow'd, mown, reapt, shockt and prepared the Corn, &c. but the contrary hath been held, *ideo quere.* Roll 650.d. 10. Noy contra 15.

But in consideration that the Parishioner hath made the Grass growing in such a Close, and then paid the Tithe of it, he hath been free of the payment of the Tithes of the balks and hades, has been held good. Hetley. 147.

It is not a good *modus* that the Parishioner having spent all his Hay upon the Beasts of the plow, that therefore he should be free from payment of Tithe-Hay. Roll 1. 650. d. 13.

But a *modus* that in consideration the Parishioner hath cut, dryed and shockt the Corn, he hath been freed from the payment of Tithe-Hay, has been held a good Prescription. Roll 650. d. 13.

A *modus* that the Parishioner hath time out of mind got Rushes and strewed the Church, and in consideration thereof hath been discharged of the payment of Tithe-Hay, has been adjudged no good *modus*, but if it had been to strew the Parsons Seat, or to deliver straw to the Parson to strew the Church, had been a good *modus*. Noy 31. Cro. El. 276.

And it hath been held a good *modus*, that in consideration the Parishioner has made the Hay into Grass-Cock, that therefore Roll 1. 647. b. 1, 2, 3, 4. 648. d. 1, 2. 649. d. 3, 4.

Heley. 133.
Hob. 250.
More 910.
Cro. El. 660.

2 Inst. 652.

Bees.
Roll 1. 651. d.
15.

Herbage.
Bulst. 2. Price
vers. Mascab.
More 909.

Guest Horses.
Roll 1. 650. d.
14.

Fewel.
More 909.

therefore he hath been discharged of the Tithe of the aftermath; but Sir Edward Coke declares for Law, that there needs no *modus* to be alledged, but that aftermath is of it self freed from the payment of Tithes, and so I take it the Law is held at this day.

A *modus* to pay the tenth part of all the honey and wax of Bees killed, has been held a good *modus* for the Tithe of Bees.

But there have been some opinions, that there is no Tithe due by the Law for Bees, because they are *fera natura*. But nevertheless by Custom they may be Tithable, and so they are in most places.

A Custom or Prescription to pay no Tithe for the Herbage of Beasts bred up for the Plow and Payl hath been allowed to be a good Custom, but of this see more before in the fifth Chapter.

It is no good *modus* that the Owner of the Land has paid all his Tithe for his Cattel there depastured, therefore to be free of the Tithe Herbage for guest Horses.

It hath been held that no Tithes shall be paid for the fewel spent in the dwelling Houses in the same Parish it grew, without alledging any *modus* at all.

But it should seem that in this last Case there needs no *modus* at all to be alledged, but that for the fewel spent in the Owners House in the same Parish, there is no Tithe due of Common right.

Ideo quare.

If a Man prescribe to pay six shillings and eight pence, for all the Tithes arising and happening in such a Park, and the Park is disparkt and turned to tillage, the Prescription is gone.

But if in this Case he had made his Prescription, that in consideration of six shillings and eight pence yearly paid to the Parson, &c. he had been freed of all the Tithes arising upon six hundred Acres of Land called a D. Park, this had been a good Prescription, and should have freed the Park.

So if the Prescription of a Park have been to pay six shillings and eight pence, and a shoulder of every Buck kill'd in the Park, in discharge of all Tithes arising within the same: in this case, though the Park be disparked, and no Deer left, yet the *modus* remains, and shall discharge the whole Tithes.

And it has been held a good *modus* to give a Buck and a Doe yearly to the Rector, &c. in discharge of all the Tithes arising within the Park, although they be *feræ nature*.

Cro. Car. 113.
Norton vers.
Farmer T. 4.
Car. 1. C. B.

Parks.
Roll 1. 651. E.
1. and 4. Mas-
cal vers.
Price. P. 13.
Jac. B. R.
Hob. 39.
Hutton 58.

Roll 1. 652. E.
5.

Boothby vers.
Reynels. M.
ac. Jac. B. R.
M. 10. Jac. ro.
641. B. R.
Hutton 57.
Noy 146.

*Modus for
Land.*
Hutton 58.

If a Parson, &c. have had an Acre or piece of Meadow ground, time out of mind, in discharge of all the Tithe-Hay arising upon such a Farm, this shall only discharge the Hay upon the antient Meadowing, and not the Hay of Ground converted from Pasture or Tillage to Meadowing.

Roll 1. 651.
E. 1.
2 Inst. 490.

But if one have a *modus* for all the demesne of his Mannor, and erect a new Mill this shall be comprehended within the *modus* and shall not pay any Tithe.

Roll 1. 651.
E. 2.

*Where a mo-
dus to the Vicar
shall discharge
against the
Parson, and e
converso.*

Mere 907.
Cokes Sch. 2
Cases. 37.
Cro. El. 137.
Hutton 57.
10. Jac. r. 641.
*Modus to pay
a rate to the
Vicar for
Tithes due to
the Parson.*

But if a Man have a *Modus* for all the Hay and Grass upon twenty Acres of Land, and converts the same to Tillage, or into a Hop-Yard, he shall pay Tithes thereof: So it appears a great difference where the *modus* goes to all manner of Tithes in general, and where to particular Tithes.

Where a *modus* is alledged to pay a certain Sum to the Vicar in discharge of any Tithes due to the Parson, this being a dispute of the right between two Clergymen, ought to be determined in the Ecclesiastical Court, but it seems to be a good *modus* as to the Parishioner, and so it was held in the case of *Pool* and *Reynels* in the Kings Bench. Mich. 10. Jac. But Mr. *Ware* reports a case to be adjudged H. 18. Jac. B. R. that it was no good *modus*, and that *Henden* vouched one *Bankes* Case to be adjudged accordingly. *Ideo quare.*
But

But it seems to me a good *modus*, for this being Originally a *modus* between the Parson and Parishioner, the Vicar might be indowed with the *modus*; but this must be intended also where the indowment is time out of mind, and not to be produced, or where the Vicar hath it specially in his indowment.

But to pay a rate to the Parish Clerk is no good discharge of Tithes against the Parson or Vicar, unless the Parson be bound by Custom to find the Parish Clerk, nor is a *modus* to the Parson a good discharge against the Vicar.

Leonard 1.
94.
Croke El. 71.
Bulst. 1. 320.
Wintel vers.
Child M. 14.
Jac. B. R.

And so having shewed what Prescriptions *de modo decimandi*, and *de non decimando* are good and allowable at the Common Law, in the next place I shall shew how a *modus decimandi* or Prescription may be destroyed or lost.

C H A P. XVII.

*The Seventeenth Chapter shews how
a modus decimandi or Prescrip-
tion may be lost or destroyed.*

Roll 1. 652.

f. 1, 2.

*What matter
will destroy a
Modus.*

IF a Man have a *modus* for a Mill which is removed of necessity to a new place because the water *invito* has changed its course, here though the Mill be removed the *modus* remains.

But if the Owner of such a Mill shall of his own accord, and without any cause of necessity remove his Mill to a new place, in this case he shall lose his *modus*.

Roll 1. 652. f.
2.

If a Man have a *modus decimandi* for two Messuages and two Mills to pay twenty shillings *per annum*, and he erects a new Mill in one of the Messuages, the *modus* shall not extend to free the new Mill.

Stepney verf.
Warren P. 41.
El. B. R.

There have been Opinions that Unity of Possession, that is, to have fee-simple in the Rectory, and likewise in the Land to which the *modus* is annexed, should destroy a Prescription or *modus deciman-
di*.

But

But if a Man have four Water Corn Mills for which he hath time but of mind paid a *modus* of four shillings *per annum*, and pulls down one of them, yet the *modus* remains, and he shall still pay the four shillings.

Sir John Hol-
lys Cale. T. 9.
Jac. B.R.

C H A P. XVIII.

The Eighteenth Chapter shews, by What Conveyances, and by what names, Tithes may be granted, conveyed, demised, &c. and what Demises Parsons and Vicars may make of their Glebe and Tithes.

Regularly Tithes at this day cannot be granted or demised but by Deed in Writing under Hand and Seal, or by matter of a higher nature, as Fines, Recoveries, &c. But in such cases as they are become Lay-fee they may be devised by Will in writing as Lands may, but they cannot be granted by Copy of Court Roll, because they cannot be parcel of a Mannor.

Stiles 261.
By what Con-
veyances
Tithes will
pass.
Hungerford
vers. Haw-
land. T. 36. El.
ro. 506. per
Owen. Cro.
El. 814.

But But

Brettyman
vers. Wood-
ward. P. 31.
Eliz. 10. 17. B.
R. B. Noy. 89.
Hetley 3.
Hughes 373.
Bellamy vers.
Bapthorp M.
2 Car. 10. 179.
B. R.
Co. 4. 35. a.

St. 32 H. 8.
cap. 7.

But Tithes cannot be conveyed or demised by any paroll agreement, unless it be to the owner of the Land for one year by way of retainer.

Tithes impropriate are at this day by the several Statutes of dissolution become Lay-fee, and will pass by the name of Hereditaments, but by the grant of a portion of Tithes, the Tithes belonging to a Rectory will not pass.

Tithes impropriate may be past from one to another by Deeds of Bargain and Sale, inrolled according to the Statute of 27 H. 8. they may be transferred in use upon good consideration by Deeds of Covenant to stand seized, or by Fines or common Recoveries, and may be sued for by Writs of Assise of novel disseisin, Writs of Entry, Writs of Right or other real Actions, or by *ejectione firmæ*.

But upon a Lease for Lives of Tithes, no Rent can be reserved to be recovered at or by the Common Law, for no Action of debt will lie, or distress can be taken, & *ubi non est remedium, ibi non est jus*.

But upon a demise of Tithes for Years a Rent may be reserved, because an Action of debt will lye upon such Lease upon the Contract.

C H A P, XIX.

The Ninteenth Chapter shews, what barren Lands are free from the payment of Tithes within the Statute of 2 E. 6. cap. 13.

IN the Statute of 2 E.6. there is a Proviso to this effect. 2 Ed. 6. cap. 13.

That all such barren Heath or waste Ground, other than such as be discharged from the payment of Tithes by Act of Parliament, which before this time have lain barren and paid no Tithes by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth after the end and term of seven yeers next after such Improvement fully ended and determined, pay Tithes of Corn and Hay growing upon the same, any thing in this Act to the contrary in any wise notwithstanding.

This Clause was added for the encouragement of Tillage and Improvement of lands by water or otherwise; and therefore though here be no words of discharge of the payment of Tithes, during the first seven yeers, yet by a reasonable intendment, the same shall be discharged from the payment of Corn and Hay, for the first seven yeers

Y

after P. 5.

2 Inst. 656.
Dyer 170. b.
P. 5.

after the Improvement: and that is proved by the subsequent Clause, whereby it is provided,

Plow. 204. a.
396. b:

That if any such barren waste or Heath-ground hath before this time been charged with the payment of any Tithes, and that the same be hereafter improved and converted into arable or Meadow, that then the owner or owners thereof shall during the seven years next following from and after the same Improvement pay such kind of Tithes as was paid for the same before the said Improvement, anything in this Act &c.

So that it appears plainly by this *Proviso*, that it was the intent of the makers of this Law only to free these improved Lands from the payment of such Tithes as were produced by the improvement, which must be hay or Corn and no other.

Next, suppose a Man have barren Lands within this Law which are free from the payment of Tithes by prescription, real composition, &c. It should seem by the penning of the aforesaid *Proviso*, that he should pay Tithes for the same after the seven years, this *Proviso* only providing for such Lands as are freed by Act of Parliament.

But that doubt seems cleared by the next precedent *Proviso* in this very Act, whereby it is provided.

That no Person shall be sued or otherwise compelled

*compelled to yield, give or pay any manner of Tithes for any Mannors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any Privilege or Prescription are not chargeable with the payment of any such Tithes, or that be discharged by any composition real.

So that this Proviso preserves all former legal discharges.

But the great question upon this Law is, what shall be said to be barren Heath or waste Ground within this Law: and Sir Edward Coke defines barren Land in these words,

Terra sterilis est terra infœcunda nullum ferens fructum. But that definition will not hold in this Case, for it does appear by the second Proviso, that such barren Lands are intended that are barren

quoad Agriculturam, that is, such barren Heath or waste Ground that of its own nature, without improvement by Lime, Marle, Manure, &c. will not bring forth Corn or Hay.

But if Ground be not fit for Tillage, yet if it be not *suapte natura* barren, it is not within this Law. As if a Wood be stubbed and grub'd up, and made fit for the Plow, and reduced to Tillage, it shall pay Tithes presently; for Wood-Ground is *Terra fertilis & Facunda*.

2 Inst. 655.
656.

Dyer 170.p.
5.Cc. Ent 462,
463.

6.E.6.per
Bendloes.
2 I. R. 656.
Hill. 9. J. C. C.
B. x. motine
Houghton.

2 Infl. 656.
More. 969.

So if Marsh, Meadow or other Land by neglecting to scour the Trenches or Sewers, or by sudden inundation be drowned. or if by ill husbandry or negligence fertile Land be over run with goss, whins, broom, fern, bushes, briars, &c; yet they shall not have the benefit of this *Proviso*, because of their own natures they are fertile and apt for Tillage, and the Parson, Vicar &c. shall not lose his Tithe by the ill husbandry of the Parishioner.

Co. 10 86 b.
Co. 6. 18 a.

If Lands were barren Heath or waste Ground at the time of the making of this Act, and were improved, and had or might have had the benefit of this Law, and after return to their barrenness, the Owner of such Lands shall not have the benefit of this Law a second time upon a second improvement: but I take the Law to be otherwise, if the Lands had been improved before the time of the making of this Law, and were then become barren again, for there I take it, upon a new improvement the owner of such Lands shall have the benefit of this Law.

More. 430.
3. bulst. 165.
2 Infl. 656.

Marsh Lands new gained from the Seas, and Fen Lands gained from the fresh waters by draining, banking, &c. are not within the meaning of this Law to be freed from the payment of Tithes, during the first seven years after the gaining. But

But the Determination of this point, which is or which is not barren Land within this Statute, commonly falls out to be determined by common Jurors, which notwithstanding the Direction of the Judge are seldom so favourable to the Church as they ought.

This *Proviso* only charges the payment of Corn and Hay after the seven years, and the second *Proviso* provides only for the payment of such like Tithes as were formerly paid before the improvement, for the first seven years after the improvement, and makes no provision for the payment of other Tithes, save Corn and Hay, after the seven years: So that it may seem to imply a discharge of all Tithes, but Corn & Hay after the seven years. But to this I answer, that there being several Laws both Statute and Canon made formerly for the due payment of Tithes, and no negative words in this Act, it shall not abrogate those Laws to the prejudice of the Church by implication.

27. H. 8. c. 20.
32. H. 8. c. 7.
confirmed by the St. of 2. E.
6.
Canon provincial. cap. Quia quid maledictionis.
cap. Erroris damnable.
cap. Quoniam propter. cap. Quoniam ut audivimus, &c.

C H A P. XX.

The Twentieth Chapter shews, what a real Composition is, and in what Cases Lands shall be freed of the payment of Tithes by such Composition real.

Where Tithes shall be discharged by a real Composition, and what it is.

Co.4.44.a.
2 Inst.655.
Doct.& Stud.
l.2.cap.55.
f.ult.

THAT which we call a real Composition is, where the present Incumbent of any Church, together with his Patron and Ordinary do agree by Deed under their hands and seals, or by fine in the Kings Court, that such Lands shall be freed and discharged of the payment of all manner of Tithes for ever, paying some annual payment, or doing some other thing to the ease, profit or advantage of the Parson or Vicar, &c. to whom the Tithes did belong: And these real Compositions have ever been held and allowed here in *England* to be a good Discharge of the payment of Tithes: And from these real Compositions it is intended, all Prescriptions *de modo decimandi* first took their rise and beginning, though I doubt most at this day have grown up from the negligence and carelesness

carelesness of the Clergy themselves.

And such Compositions may be made by the Parishioner alone without the Patron and Ordinary, but it then binds only for the life of the Incumbent, and will be avoided by his Resignation, Deprivation, or being absent eighty daies in a year from his Cure, if he have Cure of Souls.

Vide Lindw. cap. Quoniam propter verbo Redemptionem Upon this matter.

But it seems some of the Canonists and Civilians are of Opinion, that all Compositions between the Lay and Clergy to be discharged wholly of payment of Tithes, or to pay less in recompence than the full value, are invalid, but otherwise between Clergy-men; but by the common Law, which must govern here, there is no such difference allowed, but all real Compositions made as aforesaid are good and valid.

But note, that no Composition made by parol or word of mouth only, and not reduced into writing under hand and seal, is binding at all, unless it be upon Record as by Fine, &c.

Hob. 176.

But I conceive at this day no real Composition can be made to bind the Successor of the Parson or Vicar that makes the same, for they are now restrained by the Stat. of 13 El. to make any Grants other than for twenty one years, or for three Lives, with the other qualifications mentioned in the said Act.

13. El. cap. 10.

Y 4 So

So that it seems clear to me, that Parsons and Vicars at this day, notwithstanding the confirmation of the Patron and Ordinary, cannot charge their Benefices or any thing belonging to them, other than for twenty one years or three Lives as aforesaid, and that only by Leases confirmed by Patron and Ordinary of things usually demised; whereupon the accustomed yearly Rent or more is reserved.

So that what has been said concerning real Compositions is only to be intended of such as were made before that and other later Statutes, for I take it a real Composition at this day will only bind the Parson himself, whilst he is Parson Resident, and serving the Cure, *quod nota.*

CHAP.

C H A P. XXI.

*The One and Twentieth Chapter
shews, what Monastery Lands are,
or may be free from the Payment of
Tithes.*

IT is without Dispute, that none of
the Abby and Priory Lands, that
came to the Crown by the Statute of 27
H. 8. or before, are freed or discharged
of the payment of Tithes by the Statute
of 31 H. 8. c. 8. or by any other Law or
Act of Parliament.

Jones 373.
188. Stat.
27 H. 8. cap.
28.
*What Monast-
ry Lands shall
be freed from
payment of
Tithes.*

But in the Statute of 27 H. 8. there
was a *Proviso*, that notwithstanding that
Act the King might by his Letters Pa-
tents under the great Seal of England
continue any of the said Monasteries,
and that *Proviso* is left out of all the
modern Prints, only *Rastal* in his a-
bridging of that Statute makes some
mention of it.

Now the Reader must observe once
for all, that all Monasteries under two
hundred pounds *per annum* were to have
been dissolved by the Statute of 27 H. 8.
and are therefore usually called the
smaller Abbeyes, and those of two hun-
dred pounds a year and upwards were
not dissolved till the 31 year of H. 8.
and

and are commonly called the great Abbeys.

And upon these two Statutes this Case lately hapned in the Exchequer Chamber between *Walklate* Farmer of the Rectory of *Uttoxeter* in the County of *Staff.* to the Dean of *Winsor*, and *Wilshaw* owner of a Farm in that Parish, that was parcel of the possessions of the Abbey of *Croxden* in the same County, which was one of the small Abbeys, & of the *Cistercian* order; which order was freed of the payment of Tithes, as shall be shewed hereafter, and this Abbey was discovered by the defendant *Wilshaw* to be continued by Letters Patents under the great Seal of *England*, and so not dissolved till the Statute of 31 H. 8. whereupon the defendant was dismissed, and the Court clearly held the Lands discharged of payment of Tithes by the Stat. of 31 H. 8. I mention this case for the singularity, not, for any nicety in the Learning of it.

31 H.8.c.13.

31 H.8.c.8.

The Clause of
31 H.8. that
frees Abbey
Lands.

By the Statute of 31 H.8. before mentioned, there is a clause to this effect.

That the King and his Patentees, which then had, or then after should have any Monasteries, Abbathies, Priories, Nunneries, Colledges, Hospitals, Houses of Fryars, &c. or any Mannors, Lands, &c. which did belong to them, should have, hold, retain, keep and enjoy the said Mannors, &c. according to their Estates

Estates and Titles discharged and acquitted of the payment of Tithes as freely, and in as large and ample manner as the said Abbots, &c. or any of them had held, occupied, possessed, used, retained, or enjoyed the same, or any part thereof at the daies of their dissolution.

And the Reader is to observe, that the Abbots, &c. at the time of their dissolution held their Lands discharged four manner of legal and regular ways which were allowed by the Laws of this Realm, to wit,

1. By the Bulls of Popes. 2. By real Compositions with the Parson &c. Patron and Ordinary. 3. By Prescription, And 4, By Order.

But there is another sort of discharge, though not a legal one, has been allowed in this case to make a 5. sort of discharge, and that is perpetual unity, where the Abbot has had the Rectory of any Church & lands in the same parish time out of mind, which have been held free from the payment of Tithes by all the time of memory, and of these several discharges I will speak in order.

And first of discharges by the Popes *Bulls*: it is to be understood, that when the Pope usurped a power over the Clergy here in *England*, he did at his pleasure grant Exemptions to this or that Abbey, or to whom else he pleased to be freed from the payment of Tithes which

which was allowed as a good discharge against the Parsons and Vicars, who in many places suffer by these Bulls to this day, these Bulls being turned into prescriptions, &c.

Real Compositions.

The second sort of discharges was by real Compositions between the Parson or Vicar, and the Abbots, Priors, &c. confirmed by the Patron and Ordinary: of these we have spoken at large before in the twentieth Chapter, & therefore shall not repeat it, but pass to the third sort of discharges.

The third sort of discharges is by Prescription, of which we have likewise spoken at large before in the sixteenth chapter to which I shall refer the reader.

I shall only observe to the Reader again in this place, that the Abbots, Priors and other religious persons might prescribe generally to be free from the payment, or to be discharged of the payment of Tithes without any recompence to the Parson, &c. but a Lay-man could not prescribe absolutely to be free from payment of Tithes, but *sub modo*, that is paying or doing something to, or for, the Parson, Vicar, &c. in recompence & satisfaction of the Tithes, as you may at large see in the chapter here before.

And it is to be observed, that no Abbot, Prior, &c. could make any such Prescription by the common Law, that was
not

not founded before the time of memory, that is before the first year of R. 1. which is the time of the limitation of all Prescriptions at the common law, which reject the practice of the civil law, which as should seem allows the limitation of a prescription or custom to forty years. 2 Inst. 953

It may reasonably be demanded, how this manner of discharge can be made out at this day, since there is now no Person living, that can prove how the Abbots held and enjoyed their Lands; to which I answer, that what was done before the dissolution of Abbeyes must now be proved by what has been done since; for if Monastery Lands have been held all the time of memory since the dissolution, freed from the payment of Tithes, it shall be intended, that they were so held before; and therefore they have not paid or been questioned since.

The fourth sort of discharge is by order. and this discharge also for the most part depends upon Popes Bulls, or grants, who at pleasure granted exemption to what orders they pleased. *Discharge by Order.*

About the Year of our Lord 1150. the most Religious orders then in being were discharged of the payment of Tithes; but about that time Pope Adrian the fourth reduced them to Cister- 2 Inst 652: Seld. Hist. de- cim. 110.
tians, Hospitaliers and Templers, and about the Year 1215. Pope Innocent the third

Seld. de de-
cim. 406.
Dyer 277,
278.

third added the *Pramonstratenses*. But the Priviledges granted to these orders extended only to the Lands, these orders held in their own manurance, and not to any which was held by their Tenants or Farmers,

But about the begining of the Reign of *H. 4.* the *Cistertians* attempted to have enlarged their privilege to their Tenants and Farmers, which tending to the ruin of many poor Parsons and Vicars that had cure of Souls, was complained of in a Parliamt held in the second year of *H. 4.* whereupon it was enacted, that not only the *Cistertians*, but all other orders that put any Bulls in execution for the discharging any of their Lands from the payment of Tithes in the hands of their Tenants and Farmers, shall incur a *Premunire*, that is, forfeit all their Goods and the profits of their Lands during life, and be likewise imprisoned during the offenders life. which gave such a check to that proceeding, that I do not find any thing of that nature after attempted.

The Templers.
2 Inst. 432.

The Templers after in the Council of *Vienna*. which was held in the year of our Lord 1311. and in the fourth year of *E. 2.* were condemned for Heresy, And all their possessions by act of Parliament made in the 17 year of the same King, were transferred to the *Hospita-*
liers

liers or Knights of St. John of Jerusalem Stat. 17. E. 2. who enjoyed them till the thirty second year of the Reign of King H. 8. at which time by act of Parliament they were settled upon the Crown. 32 H. 8. c. 24.

But where it is said in *Kelway* that the *Templers* were condemned of heresie in the 8 year E. 2. and their Lands given the same year to the *Hospitaliers*, it is a great error; for it is clear, that the Council of *Vienna* was held in the fourth year of that King, and chiefly called against the *Templers*; and it is as clear that their Lands were not here in *England* settled upon the *Hospitaliers* till the seventeenth of the same King; *Kelway*, 174. a.

And though the Lands of the lesser Monasteries be not within the benefit of the Statute of 31 H. 8. to be freed of the payment of Tithes; yet they ought to enjoy all such priviledges as are annexed to the Land, and therefore such lands in whose hands soever they come, shall be freed of the payment of Tithes by real compositions and prescriptions *de modo decimandi*, but not by prescriptions *de Jones*. 3. *non decimando*, unity of possession, order or Bulls of Popes: but in all the cases the Parsons and Vicars have the advantage by the dissolution of all those Abbeys that were dissolved by the Statute of 27 H. 8. and the Parsons and Vicars shall in such case be restored to their Tithes, *Where the lesser Abbeyes may be freed of Tithes.*

Tithes again, which in all Justice they ought in all other cases if the Parliament had not seen reason to the contrary.

The lesser Monasteries, that is, which were under 200*l.* per annum of the orders of *Cisterians* and *Premonstratenses* were, as has been said, dissolved by the Statute of 27 H.8. have lost the privilege of being discharged of the payment of Tithes, unless they were continued as the Abbey of *Crouden* was; but those Monasteries of those orders that came to the Crown by the Statute of 31 H.8. retain the privilege of those orders in not paying Tithes. But this is to be understood only for such time as the Owners hold them in their own manurance; for if they let them out to Tenants they shall have no more privilege than the Tenants of those orders of the *Cisterians* and *Premonstratenses* had, which was none at all.

Jones 2,3,
&c. Cro. Jac.
667. Hob. 608
609. Lands of
the lesser Ab-
beys granted
to the bigger
not freed.

But note, that if the King after the dissolution of the lesser Monasteries (which had been of any of the orders that were discharged of the payment of Tithes) had granted any of their Lands to any of the greater Monasteries which were not dissolved till the Statute of 31 H.8. yet those shall not recain the Privileges the Abbots had at the time of the former dissolution; the right immediately

immediately reverting by the dissolution to the Parsons and Vicars to whom the Tithes of right did belong, the greater Abbeys could not hold them legally discharged at the time of the second dissolution: So that there is a manifest difference between this and the case of *Walkelate* and *Wilshaw* before remembred, for in that case the Monastery was continued and not dissolved till the Statute of 31 H.8.

And it is to be observed, that no Lands acquired by any of the Monasteries of those orders which were so freed from payment of Tithes after the Council of *Lateran*, which was in the Year of our Lord 1215. and by consequence none that were founded after that Council, are discharged of the payment of Tithes either in their own, or their Tenants hands, for by that Council the Priviledge was limited to such Lands as these orders had at the time of that Council.

And although any Abbey Lands of the great Abbeys which were of the *Cistercian* and *Premonstratensian* orders were in the hands of Tenants for years at the time of the dissolution, yet the King and his Patentees after the Leases determined shall hold them discharged, whilst the Patentees and Owners hold them in their own hands, but the Kings Tenants shall hold them discharged because of the

Land purchased after the Priviledges granted, not freed;

Seldens hist. of Tithes 121.

Dyer 277. b. p. 60. Cro. Jac. 559.

5 Perpetual
unity.

Co. 2. 47. b. &c.

Co. 11. 14. b.
Dyer 349. p. 16.

More 5. 8.

Hob. 311.

306. 298.

300.

2 Inst. 655.

More 46. 47.

Cro. Jac. 508.

Definition.

Royal Prerogative of his Person not being intended fit for Husbandry.

Having now said thus much of the four legal manner of discharges beforementioned, I shall proceed to that of perpetual unity, which cannot be said to be a legal discharge of the payment of Tithes: Yet because the Abbots, Priors, &c. at the time of the dissolution held the Lands discharged of the payment of Tithes, though not legally discharged of Tithes, it hath been resolved by many Judgments and settled, that this is a good discharge within the meaning of the aforesaid clause of 31 H. 8. Now that which we call a perpetual unity is, as hath been said, where an Abbot, Prior, &c. time out of mind have been seized of the Lands out of which the Tithes arise, and the Rectory within which Parish the Lands lye.

And it is to be observed that every perpetual unity, that shall discharge the Lands from the payment of Tithes, must have these four qualities.

Co. 11. 44. b.
Hob. 300.

First, it must be *justa*, that is, by good and lawful Tithes.

Secondly, It must be perpetual, that is, the Abbey must be founded and endowed with the Land and Rectory before the time of memory, which by the rules of the Common Law, as has been said, must be before the first Year of R. 1. for if by any Records, Deeds, or other legal and

and good evidence it can be made appear, that either the Land or Rectory came to the Abbey since the said first Year of R. 1. the union is not perpetual: and yet if the appropriation be antient, as in the time of E. 4. or before, though the Lands cannot be discharged upon the score of perpetual unity; yet they may by prescription, if in truth the Lands were held discharged of the payment of Tithes.

Thirdly, such unity as shall discharge Lands of the payment of Tithes within this Law, must be *equalis*, that is, the Abbots, Priors, &c. must be seized in fee-simple as well of the Lands upon which, &c. as of the Rectory.

Lastly, such unity must be *libera*, that is, free from the payment of any manner of Tithes; for if their Farmers at will, years, &c. have paid any manner of Tithes to the Abbots, Priors, &c. or their Farmers of the Rectories, the perpetual unity will not serve. And therefore where such perpetual unity is pleaded in discharge of Tithes, the adverse party may reply, that the Tenants or Farmers before the dissolution paid some sort of Tithes, and so avoid the perpetual unity.

Having first given the Reader satisfaction that all the Lands that came to the Crown by the Statute of 27 H. 8. and before, can have no benefit of the discharge given

by the Statute of 31 H. 8. and having also shewed how many ways Lands may be discharged from payment of Tithes that came to the Crown by the said Statute of 31 H. 8. It rests now that I should say something of those Lands that have since come to the Crown by the Statutes of 32 H. 8. cap. 24. 37 H. 8. cap. 4. and 1 E. 6. cap. 14.

Co. 2. 47. a.
*How other
Lands stand
that came not
to the Crown
by 31 H. 8.*

It is a Rule taken in the Archbishop of *Canterburies* Case, that neither the Letter, nor the meaning of the Statute of 31 H. 8. extended to free or discharge any Lands from the payment of Tithes, save those that came to the Crown by that Act; for as that Book says, it is absurd that the branch of the Statute of 31 H. 8. concerning Tithes, should be extended to a future Act, that the makers of the Statute of 31 H. 8. without the Spirit of Prophecy, could not have the prescience of.

More 913.
Cro. Jac. 57.
Hill 2 Jac.

And as to those that came to the Crown by the Statute of 32 H. 8. cap. 24. It was adjudged in the case of *Spurling* and *Quarles*, that they are not discharged of the payment of Tithes.

And after in the case between *Urrey* and *Bowyer* 8. *Jacobi* in the Common Pleas this point was moved again, and the Court was divided.

Jones 182. &c.
Latch 89.
Hughes 392.
Bridgm. 32.

But there is a later Judgment that seems to oppose these former resolutions, it was between

between one *Witton* and Sir *Richard Weston*, that was after Lord Treasurer. *Trin. 4. Car. 1. B. R.* and the question was, whether those Lands of the Hospitaliers that came to the Crown by the Statute of 32 *H. 8. cap. 24.* were discharged of the payment of Tithes by that Statute of 32 *H. 8.* or by the former Statute of 31. and in that Case *Dodridg* and *Jones* Justices, held that they were discharged within the Statute of 31 *H. 8.* and they did in effect deny the Books before cited to be Law, the Chief Justice *Hide* was of opinion that they were not discharged by the Statute of 31 *H. 8.* but by that of 32. So that by their three opinions the defendant Sir *Richard Weston* had judgment; but *Whitlock* was of opinion that those Lands were not discharged of the payment of Tithes by the one Statute or the other: now upon the whole matter I shall submit to the Judicious Readers Judgment whether this later resolution be of any weight to shake the former resolutions, since in this case though there were three for giving Judgment for the Defendant, yet to the point controverted upon the Statute of 31 *H. 8.* they were two against two, and that they were not discharged by the Statute of 32. there were three against the chief Justice *Hide*. So that I conceive the Law remains according to the former resolutions, that there are no Lands freed

from the payment of Tithes by any Statute, but those that come to the Crown by the Statute of 31 H.8. *tamen quere inde.*

I must confess I have met with no Judgments upon those Lands which came to the Crown by the Statute of 37 H. 8. but those being the same with those that came to the Crown by the Statute of 1 E.6. *cap.* 14. I conceive neither those that came to the Crown by either of those later Statutes have any priviledg at all, and it is agreed in that very case of *Witton* and *Weston*, that those Lands that came to the Crown by 1 E.6. could not have any benefit by the clause of discharge in the Statute of 31 H.8.

Jones 185.
Co.2.47.a.

So that I shall conclude, that there is no Land can have any priviledg at this day to be discharged of Tithes that belonged to the Abbots, Priors, &c. but such only as came to the Crown by the Statute of 31 H. 8. *cap.* 13.

CHAP.

C H A P. XXII.

*The Two and Twentieth Chapter shews,
what Personal Tithes are, and in
what manner they are payable.*

THE Canonists define personal Tithes thus.

Decime personales sic dicte, quia potius in respectu persone solvuntur quam rei, ut puta de artificio, negotiatione & militia. And by the Canon,

Decime personales solvantur de artificibus & mercatoribus, scilicet de lucro negotiationis, similiter de carpentariis, fabris, cementariis, Textoribus, padoxatricibus, & omnibus aliis operariis stipendiariis, ut videlicet dent decimas de stipendiis suis, nisi stipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen Ecclesie, si Rectori ipsius Ecclesie placuerit. And Mr. Lindwood in his Gloss adds,

Et scias quod in istis decimis mere personalibus, quæ considerantur ex solo lucro, deducuntur expensæ tam in re quam circa rem & extra rem factæ. Et nota, quod de solo lucro debetur hæc decima, unde si emens mercem eam non vendat, sed donet vel sibi retineat, non tenetur decimare, quia non lucratur.

Lindwood cap.

Quoniam propter verb. decime personales. What personal Tithes are, and where payable.

The Canon.

Verbo negotiationis.

So that it appears by the Canon Law, that every one ought to pay for a personal Tithe a tenth part of all his clear gains, deducting all his charges and expences for a personal Tithe; but if a man buy Merchandizes, and do not sell them to profit, or give them, or make use of them himself, no Tithe is to be paid, because there is no gain made of them.

2 E.6.c.13.

*The Statute
for personal
Tithes.*

Now let us see, what the Statute of 2 E.6.says to us concerning personal Tithes; and by that Stat. it is enacted,

That every person exercising, merchandizing, bargaining and selling, clothing, handicraft, or other art or faculty, being such kind of persons, as then before within forty years had accustomedly used to pay such personal Tithes, or of right ought to pay (other than such as be common Day-labourers) shall yearly pay for his personal Tithes the tenth part of his clear gains, his charges deducted.

And where handicraft men have used to pay their Tithes within this forty years, the same Custom of Tithes is to be observed; and if any Person refuse to pay his personal Tithes, &c. it shall be lawful to the Ordinary of the same Diocess to call the same Party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the Parties own corporal Oath concerning the true payment of the said Tithes.

This

This Act of Parliament restrains the Canon Law in two things; first, where the Canon was general, that all persons in all places should pay their personal Tithes, the Act restrains it to such kind of persons only, as have accustomably used to pay the same within forty years before the making of the Act. Secondly, Whereas by the Ecclesiastical Laws they might before this Act have examined the Party upon his Oath concerning his gain; this Act restrains that course, so that the Party cannot be examined upon Oath; and by this Act the day-labourer is freed of the payment of his personal Tithes.

It cannot be intended upon this Act, that if such Tithes have been sometimes paid within forty years, that they are therefore due, but they must have been accustomably, that is constantly paid for forty years next before the Act.

And if it be demanded how such payment must now be proved forty years before the making of the said Act? I answer, as in other like Cases *à posteriore* by what has been done all the time of memory since the Act.

There has been some question amongst the School-men and Canonists, whether personal Tithes ought to be paid of unlawful gain, to which you shall hear what a great School-man and Doctor says:

Quod

Tho. Aqu.
Sum. 2. 2. e. q.
37. art. 20.
Whether due of
ill gotten profit.

Quod si aliqua male acquiruntur dupliciter uno modo, quia ipsa acquisitio est injusta, puta quæ acquiruntur per rapinam, furtum seu usuram, quæ homo tenetur restituere, non autem de eis decimam dare, tamen si aliquis ager sit emptus de usura, de fructu ejus tenetur usurarius decimas dare, quia fructus illi non sunt de usura, sed ex Dei munere: quedam vero dicuntur male acquisite, quia acquiruntur ex turpi causa, sicut de meretricio & histrionatu, & aliis hujusmodi, quæ non tenentur restituere unde de talibus tenentur decimas dare, secundum modum aliarum personalium decimarum, tamen Ecclesia non debet eas recipere, quamdiu sunt in peccato, ne videatur eorum peccatis communicare, sed postquam pœnituerint, possunt ab eis de his recipi decime.

So that by this great Doctors opinion it seems, that of ill gotten gain, of which restitution ought to be made, no personal Tithe is due, and yet if by ill gotten gain a field be purchased, Tithe ought to be paid of the fruits thereof: but of ill gotten gain, where no Restitution is to be made, there Tithes ought to be paid, but not received by the Church, till the sinner have repented him of the evil, and after such repentance the Church may receive them.

These personal Tithes are accounted amongst the offerings, of which we are

to

O
2
offeru
soli,
tur Te
It
pery
very
somet
omnis
lennia

to speak next, and ought by the Parishioner to be offered to the Church where due; but I am of the opinion of him, that said.

He decime personales magis difficultate & subtilitate quam utilitate existunt.

It hath been resolved, that Servants in Roll. I. 646. a. Husbandry shall not pay any personal Tithe.

C H A P. XXIII.

The Twenty Third Chapter shews; what Oblations, Offerings, &c. are, and where due.

Offerings are defined by the Canonists to be,

Oblations and Offerings what, and where due.

Quaecunque à piis, fidelibus Christianis offeruntur Deo & Sanctæ Ecclesiæ, sive res soli, sive mobiles sint, nec refert an legantur Testamento, aut aliter donentur.

It should seem, that in the time of Popery there was an expectation, that every one present at Mass should offer something; for St. Gregory tells us, *Quod omnis Christianus procuret ad missarum sollempnia aliquid Deo offerre.*

Greg. 78. habetur de Consecrat. div. I.

And

Can. 4.

And by a Canon in the Council *Matis* it is decreed, *ut omnibus dominicis diebus altaris oblatio ab omnibus viris & mulieribus offeratur, tam panis quam vini, ut per has immolationes, &c.*

Becan. Sum.
Theol. 3. q. 86.

But *Becanus* a learned Jesuite is more moderate; for he tells us, *Quod nemo tenetur ad illas Oblationes, nisi vel necessaria sint ad sustentationem ministrorum, vel consuetudo ad eas alicubi obliget.*

And these Offerings belonged properly to the Priest or Minister of the Church or Place where they were made; for so is the Canon of Pope *Damasus*.

Can. Damas.
Pap. Et habetur. 10. q. 1.

Quod Oblationes quæ intra sanctam Ecclesiam offeruntur, tantammodo Sacerdotibus qui quotidie servire videntur, licet comedere & habere, &c.

But it should seem, that private Chapels carried away many of the offerings belonging to the Mother Churches, to avoid which *Othobon* the Popes Legate here made a Canon to remedy that mischief to this purpose,

Cap. De Oblationibus.

Quod Capellani ministrantes in Capellis hujusmodi, quæ salvo jure matricis Ecclesie sunt concessæ, universas Oblationes & cætera quæ ipsis non recipientibus ad Ecclesiam matricem provenire deberent, ipsius Ecclesie Rectori sine difficultate restituant, cum illud tanquam alienum juste nequeant retinere. Si quis autem restituere contempserit, suspensionis vinculo, quousque

que

que restituerit, se noverit innodatum

So that it seems by this Canon, that Chappels that had parochial Rights, the Chaplains of them might retain the offerings, but where the parochial Rights were saved to the Mother Church, the Chaplains of such Chappels were to account to the Rector of the Mother Church for the Offerings made at such Chappels.

There was another Canon made by Simon Mepham Archbishop of Canterbury, and his Clergy in the year of our Lord 1328. reciting.

Quia quidam maledictionis filii in nubentium solenniis, purificationibus mulierum, mortuorum exequiis, & aliis, in quibus ipse dominus in ministrorum suorum personis solebat oblationum libamine populariter honorari, ad unius Denarii, vel alterius modice quantitatis oblationem, populi devotionem restringere sunt moliti, residuum oblationis fidelium suis, pro libito, vel alienis usibus multisoties applicantes: Presentis declaratione Consilii declaramus & pronunciamus, omnes & singulos in premissis, vel eorum aliquos impostero delinquentes, vinculo majoris excommunicationis involvi.

Cap. Quia quidam maledictionis, &c.

So that upon the whole matter it appears, there were some offerings free and voluntary, which the Parishioners or others were not bound to perform, but *ad libitum*.

libitum. There were others by Custom certain and obligatory, as those for Marriages, Christnings, Churching of Women, Burials, &c. and that these were all due, and belonged to the Parish Priest or Minister, that officiated at the Mother Church or Chappels, that had parochial Rights; the other Chappels that had not parochial Rights, were to account to the Rector for the Parish Church: now let us see, what the Statute of 2 E. 6. says, by which it is enacted,

2 E. 6. c. 13.
The Statute
for Offerings.

That all and every Person or Persons, which by the Laws and Customs of this Realm ought to make or pay their offerings, shall yearly from thenceforth well and truly content and pay his or their offerings to the Parson, &c. of the Parish, or Parishes, where it shall fortune or happen him or them to dwell or abide, &c.

Those Offerings which were free and voluntary are now vanished, and are not comprehended within this Law, but those that were customary and certain, as for Communicants, Marriages, Christenings, Churching of Women & Burials, are confirmed to the Parish Priest, Vicars and Curates of the Parishes, where the parties live that ought to pay the same; and they are only recoverable in the Spiritual Court, or an Action (I conceive) may be formed upon this Statute at Common Law.

C H A P. XXIV.

*The Twenty Fourth Chapter shews,
what Mortuaries are, and in what
Cases they are due at this day, and
how much is to be paid for the
same.*

BY a Provincial Canon made by Simon Langham Archbishop of Canterbury and his Clergy, in the Year of our Lord 1378. It was decreed.

*Where, and
what is due
for Mortua-
ries.*

*Quod si decedens tria vel plura cuius-
cunque generis in bonis suis habuerit ani-
malia, optimo cui debitum de jure fuerit
reservato, Ecclesie sue, à qua Sacramenta
recepit, dum viverit, sine dolo, fraude seu
contradictione qualibet pro recompensatio-
ne subtractionis decimarum personalium,
nec non & oblationum, secundum melius
animal reservetur post obitum pro salute
anime sue Ecclesie sue hujusmodi libe-
randum: quod si duo tantum in bonis de-
cedentis extiterint animalia, de mansuetu-
dine Ecclesie exactio qualibet nomine mor-
tuarii remittatur: quodque si Mulier viro
superstite obierit, ad solutionem mortuarii
minime coerceatur; Sed si post obitum
mariti, in domo cum familia regimine vi-
dua per annum supervixerit, juxta formam
superius*

*Cap. Statutum
& infra, &c.
The Canon.*

superius

superius scriptam, ad mortuarium obligetur: Hac autem interpretatione, consuetudini laudabili super mortuariis in nostra provincia aliter observare nolumus præjudicium generari; quin si decedens numerum hujusmodi animalium habuerit seu non habuerit virve aut uxor prius vel post decesserit, super præstatione Mortuarii consuetudo Ecclesiastica observetur: ad solutionem autem debiti de jure vel consuetudine mortuarii renuente, volumus per ordinarios locorum censura Ecclesiastica coarctari.

How far this Canon was obeyed in England I can give no account, but I have not found the English willing to have their Estates taken from them by Canons, nor have found that any prohibitions have been granted in case of Mortuaries; nor have I observed any complaints in Parliament against them (save that 2 R. 2. It is pray'd that Parsons and Vicars might not require Mortuaries of the Armour of any Man; but that it might remain to their Executors) till the 21 H. 8. and then they were settled by Statute as follows,

Stat. 21. H. 8.
cap. 6.

*The Statute for
Mortuaries.*

1. *That no Man should pay a Mortuary unless he died possessed of Goods to the value of ten Marks, that is, six pounds thirteen shillings and four pence.*

2. *That no Mortuary should be paid or demanded, but in such places where they*
have

have used to be paid or given.

3. That they should be paid but in one place, and that at the partie's most usual dwelling and habitation, and there but one Mortuary, and that after the rate following, that is to say.

4. That if the decedent at the time of his death, had in moveable Goods to the value of ten Marks clearly, his debts first paid and under the sum of thirty pounds, then he should pay three shillings and four pence and no more, and this must be in moveables, and not in Chattels as Leases for Years, &c.

5. That if the decedent died possessed of moveables of the value of thirty pounds, and under the value of forty pounds, to pay six shillings and eight pence for a Mortuary.

6. If the Decedents Goods be of the value of forty pounds or upwards, then to pay ten shillings for a Mortuary.

7. That no married Woman, Child, or Person not keeping House should pay any mortuary, nor a wayfaring Man, or other that was not resident where he died, but those to pay where they were last resident.

8. The Parson or Vicar are not by this Act barred of any Legacy given, or offering to be made to them.

The Parsons Counsellor: Part II.

9. No Mortuary to be paid in Wales, Callis or Barwick, or in the Marces of Wales, but where accustomed.

10 It is provided that the four Welch Bishops, and the Archdeacon of Chester may, notwithstanding this Act, take their accustomed Mortuaries.

11. That where less hath accustomedly been taken for Mortuaries than is limited by the Act, there no more than is due by the Custom shall be taken.

2 Inst. 491.
Mortuaries
due only by Cu-
stom.

Sir Edward Coke is of opinion that there were no Mortuaries due before this Act by any Law, but by Custom only; by reason of the words in the Statute of *Circumspedite Agatis* which are, *ubi mortuarium dari consuevit, &c.*

This duty was formerly only suable for in the Court Christian, but now I conceive an Action of debt will lye at Common Law upon this Statute, for though this Statute is only negative, that they shall not take above such rates, yet it implies an affirmative, as the Statute of 2 E. 6. for barren Grounds, and the Statute for the Sheriffs Fees, & other Statutes.

Jeoffries
vers. Wood.
Hill. 22. and
23. Car. 2.
B.R.

But if a Suit be commenced for a Mortuary in the Spiritual Court, no prohibition shall be granted to stay their proceedings there, unless they proceed contrary to the Statute.

Mortuaries to
the King by
Bishop.

For those Mortuaries that Prelates antiently paid to the Kings of this Realm,

I shall not trouble the Reader with, but refer those that are curious to inform themselves, to Sir *Edward Coke's* Commentary upon *Magna Charta*, and his Jurisdiction of Courts.

2 Inst. 491.

4 Inst. 338.

10 H. 4. 1. b.

In the Tenth of H. 4. A Vicar claimed a Mortuary by Custom, and not by the Canon, or any other Law, *quod nota.*

These Mortuaries are in some places called course presents, or coarse presentees, as Doctor *Cowel* says, because where due, they used to pay them before the Coarse was buried, when it was brought to be buried.

Their names.

The Bishop of *Chester* claimed by Custom upon the death of any Priest, dying within the Archdeaconry of *Chester* for a Mortuary, his best Horse or Mare, Saddle, Bridle and Spurs, his best Gown, a Cloak, his upper Garment next it, his best Hat, his Tippet, his best Signet or Ring, and this Custom was denied by the Plaintiff in a Prohibition, but what the Success was I have not heard, but the Mortuaries due to the Archdeacon of *Chester* are excepted: and the Bishop of *Chester* holds that Archdeaconry, as I have been informed, in the nature of a *Commendat*, and executes it by a Deputy.

Cro. Car. 237, 238.

Bishop of Chester his demand as Archdeacon of Chester.

Mr. *Swinborne* is of opinion, that these Mortuaries are to be paid out of the decedents part of the personal Estate

Office of Executor.

Lib. 6. § 16.

where the Wife and Children are to have their reasonable part, the reason he gives is because Mortuaries are of the nature of Legacies. But I must confess I am not of his opinion, for I look upon it as a debt or duty to which the personal Estate is subject.

C H A P. XXV.

*The Five and Twentieth Chapter
shews, how Tithes are to be paid in
London.*

Tithes in London, how to be paid.

THE Livelyhood of the Clergy in London, I mean the secular Clergy, consisted heretofore chiefly in voluntary offerings and Personal Tithes, which little differ from voluntary offerings. For though a great Doctor tells us that,

*Hosienfis c.
Omnis Christi-
anus.*

In præcipuis festivitibus tenetur quis offerre, & cogi potest, maxime cum sit quasi generalis consuetudo ubique terrarum, &c.

*Idem de Faroc.
Sect. In quibus,
&c.*

And if you ask him which are those Feasts at which the People are bound to offer, he tells you, *Dies dominicos, & dies festivos.*

But

But there being no Canon or Law that prescribes any certainty in the quantity, value, or things to be offered, I can give them no properer name than voluntary or free-will offerings. But no sooner was Popery abolished in this Nation, but these voluntary Offerings and personal Tithes soon came to little. And notwithstanding it was enacted by the Statute of 2 E. 6. That all that by Law or Custom were bound to make their offerings should thenceforth pay them to the Parson, &c. yet that did not much amend the matter, so that the maintainance of the secular Clergy in London was brought to a very low ebb, there being no Tithe as hath been said, chargeable upon houses, unless by way of a *modus decimandi*, whereupon the Clergy of London in the 37th year of the Stat. 37 H. 8. c. 12. Reign of King H. 8. made their application to the Parliament, and obtained an Act of Parliament for the confirming a Decree made by the Archbishop of Canterbury and divers other great Lords of the Kingdom, to settle the matter, the effect whereof follows, which is printed amongst the other Acts of Parliament.

1. That the Citizens of London from Thenceforth for ever should pay yearly without fraud or guile to their Parsons, &c. for the time being, for every ten shillings rent of all houses, shops, warehouses, cellars and stables,

The Parsons Counsellor: Part II.

stables within the said City of London, and the Liberties of the same 16 d.ob. and for every twentys.rent, 2s.9 d.and so ascending for every ten shillings rent.

2. That if any dwelling houses, shops, &c. should be leased by fraud or covin, reserving less Rent than hath been accustomed; or shall by reason of Fine, or by fraud or covin, make any Lease without reserving any Rent, then the Farmer or Tenant shall pay after the same Rate, the said house, &c. was last let for without Covin; but note, that if the house, &c. be let at as great a Rent, as the same was set at at the time of the making of the said Statute, then no fraud can be averred, although a Fine or In-come was given for the said Lease.

2 Inst. 657.

3. That if a House, &c. be leased, and no Rent at all reserved, then such house, &c. shall pay such rate as the same was let for at the time of the making of the said Statute; but where greater Rent is reserved, it is to pay according to the best improved value.

2 Inst. 660.

But where Houses had been always held by the Owners, and, by consequence, no Rent paid, that is casus omissus in this Statute, and such Houses will be freed of payment of Tithes by this Law.

But if it were a House, that yielded Rent at the time of the making of the Decree, and be now let without Rent, it shall pay Tithes according to the Rate it was set

for

for at the making of the Decree, although no Fine at all were paid for such Lease.

5. The Tithes upon this Decree cannot be sued for in the Ecclesiastical Court, because the Act it self declares how they shall be recovered.

6. That if the Owners held the Houses themselves, then they shall pay Tithe after the rate the same were set for at the time of the Decree.

7. That if any person take any House, &c. by Lease, and he and his Executors, &c. live in part of it, and set out part, the principal Farmer or Taker, his Executors, &c. shall pay their Tithes for his and their parts after the rate aforesaid, and of such part as is farmed out according to the rate it is set at. And in the same manner Tithes are to be paid, where one takes a Lease of several Houses, and lets out part, and holds any part himself.

8. That if any Farmer, or his Assigns shall farm all the Houses, &c. so farmed to one or divers Tenants, the Tenants shall pay Tithes according to the Rent reserved.

9. That if dwelling Houses shall be converted into Ware-houses, or e converso, yet they shall pay Tithe according to the Rate aforesaid.

10. That if a Dye-house or Brew-house be let with the Implements, then a third penny of the Tithes after the rate aforesaid to be abated.

12. That where a Mansion-house with shops, stables, wharfs, with Crane, Timber-yard or Gardens belonging to the same, and occupied together shall afterwards be severed, or were severed within 8 years before the Decree, that then the Farmers of the shops, stables, &c. shall pay Tithes according to the rate abovesaid.

12. That these Tithes shall be paid quarterly at Easter, Midsummer, Michaelmas and Christmas.

13. That any Householder, that holds a House of 10 s. Rent, or above, shall be acquit of his Offerings; but his Wife, Children, and Servants shall pay 2 d. yearly for their four Offering days, receiving at Easter.

14. That if any House of 10 s. Rent or above, shall be let by parcels under 10 s. Rent, then the Owner, if he live in any part of the House, or the chief Tenant, shall pay the Tithe after the rate as the same House was accustomedly letten before such Division, and the Sub-tenants, that hold less than 10 s. per annum, without fraud or covin shall pay 2 d. yearly for their Offerings.

15. That no Tithes shall be paid for any Gardens belonging to any Mansion-house, and which are held for pleasure; but if such Garden contain half an Acre of ground or more, and shall make any yearly profit by Sale, then the same to be paid for, according to the rate abovesaid.

16. This

16. This Act is not to extend to the Houses of Noblemen or Noblewomen whilst they are kept in their own hands, and not let for Rent, and which formerly paid no Tithes, so long as the same continue unletten, nor to the Halls of any Craft or Companies so long as the same are unletten, and in times past paid no Tithes.

17. That Sheds, Stables, Cellars, Timber-yards and Texter-yards, which were never parcel of, or belonging to any dwelling House, and which have not been used to pay Tithes, shall be acquit of the payment of Tithes, as hath been accustomed.

18. But if by Custom any lesser rate have been paid than after the rate of two shillings and nine pence in the pound, then the accustomed rate only to be paid.

19. The Lord Major of the City of London, by the Advice of Council is Authorized by the said Act, to hear and determine all differences arising upon this Decree, and give Costs according to the intent thereof.

20. That if the Major do not make an end of such differences within two Months after complaint; or if any Person find himself aggrieved by his Decree, then the Lord Chancellor within three Months after complaint to him made, shall make an end of the differences with costs, &c.

21. That

21. *That if Rents fall by reason of decay or burning, to less than they were accustomedly letten, That then the Tithes during such Term, shall be paid according to the Rent reserved.*

This is a short abstract of that great Decree which I have inserted here for the use of the Clergy of that City. I shall only add some other resolutions upon this Decree, and conclude this Chapter.

Noy. 130.
*Where Suits
for Tithes in
London shall
be determined.*

In a Case between Dr. Meadhouse and Dr. Tayler it was resolved, that Suits for Tithes upon this Decree should be before the Major in writing, and not by Parol.

2. That a Reservation by a Leasor for life upon a Lease by him made for years, shall not bind him in Reversion to pay Tithes according to that rate.

3. That a Rent for half a year, and after for another half year is a yearly Rent within this Decree.

Cro. El. 276.

It hath been resolved that Abbeylands within the City of London, and the Liberties thereof are not freed from the payment of Tithes within the Statute of 31 H. 8. because the Statute and Decree for the payment of Tithes within the City and Liberties of London was made after the Statute of 31 H. 8. and their Priviledges are not reserved.

vers. Scudamore.
5 Jac. C. B.
Cro. Jac. 613.

It hath been resolved that if the Rents be continued as they were at the time of the making of the Statute, though upon

new Fines that the Tithes shall be paid accordingly. But if upon new Fines less Rent be reserved; it shall pay Tithes as it did before.

And if no Rent be reserved, nor Fine paid; the Parson shall have his Tithes according to the Rent at the time of the Decree.

But if a House have always been held by the Owners, and no Rent paid, it shall pay no Tithes within the Decree.

The Decree was inrolled 5 Martii 38 H. 8. although the inrollment cannot be found.

And it was resolved that if the Major of London shall make any Decree against Law, a Prohibition lyes; for the expolition of all Acts of Parliament belongs to the Judges of the Common Law.

And it hath been resolved that though a House in London stand void without any Tenant at all, that yet notwithstanding it shall answer Tithes to the Parson.

And it hath been resolved, that if any Suit be brought in the Ecclesiastical Court, or any other Court than is directed by the Act, a Prohibition lyes.

Lastly, where the Decree says (where no Rent is reserved by reason of any fine or income paid before hand) that is put only for Example, for if no Rent be reserved for this, or any other cause or consideration, it is within the meaning of this Clause.

C H A P.

Dr. Burgess.
parson St.
Magnes vers.
Symonds
Scaccar. M. 4.
Car. 1. per
Henden.
2 Inst. 660.

C H A P. XXVI.

The Twenty Sixth Chapter shews, in what Courts the Right of Tithes is determinable, and how, and in what manner to be recovered, and in what Cases Prohibitions are usually granted, and how prosecuted and defended,

2 Inst. 461.

490.

Seld. hist. de-
cim. 412.

Lamb. *Saxon*
Laws 45.

Seld. 414.

THAT Tithes were antiently determinable in the County and Hundred Courts, is asserted both by Sir Edward Coke and Mr. Selden: And the same appears by the Laws of King Ethelstan long before the conquest; and Mr. Selden is of opinion, that the Bishops consistory here in England was not settled till the time of William the Conqueror, who by his Charter commands, *ut nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in Hundreds placita teneant, nec causam que ad regimen animarum pertinet ad judicium secularium hominum adducant, sed quicumque secundum leges Episcopales de quacunque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc Episcopus elegerit & nominaverit, veniat, ibique*

bique de causa sua respondeat, & non secundum Hundret. sed secundum Canones & Leger Episcopales rectum Deo & Episcopo suo faciat. And closes thus, *Hoc etiam defendo, ut nullus Laicus homo de legibus, que ad Episcopum pertinent se intro-mittat;* yet notwithstanding, as Mr. Selden observes, the Jurisdiction of Tithes was not so settled in the Bishop and Ecclesiastical Courts, but there were Suits for Tithes as well in the Temporal as Ecclesiastical Courts, whereof he gives some Instances. And amongst the Laws of King H. 1. I find this Clause, *Si quis rectam decimam superteneat, vadat præpositus Regis & Episcopi & terra domini cum presbytero, & ingratu auferant;* & Ecclesie cui pertinebit, reddant & nonam partem relinquunt ei qui decimam dare noluerit. Seld. 414; &c. Leg. H. 1. c. 11. Lamb. 182.

But the Law hath been now long settled that the Ecclesiastical Courts have in some cases the power to determine the right of Tithes, and in all cases to hold plea for the subtraction and withholding of Tithes, and confirmed by several Acts of Parliament.

To the first, if a dispute happen between two Parsons, to which of them the Tithes belong, whether to the one by parochial right, or the other as a portion belonging to his Rectory by prescription, and both Parsons claim by presentation under the same

35 H. 6. 30.
38 H. 6. 22. per
Forcesc.
Where the Spi-
ritual Court
may determine
the Right of
Tithes.

same Title, so that the right of Patronage comes not in dispute, the right of these Tithes shall be determined in the Ecclesiastical Court, and no Prohibition or *Judicavit* shall hinder it, and this suit in the Ecclesiastical Court is called a spoliation.

38 H.6.21.

5 H. 5.40.

14 H.4.17.a.

b.

Where the Temporal Courts have no Jurisdiction of Tithes.

And this Jurisdiction is so peculiar and annexed to the Spiritual Courts, That if the one Parson should bring an Action of Trespass at the Common Law against the other Parson, for the taking and carrying away Corn or other things set out for Tithe, the Defendant may by way of Plea shew, that the Goods in question were Tithes set forth and severed from the nine parts, and that he is Parson of *Dale*, and that he and all his predecessors time out of mind have had these Tithes as a portion which belonged to his Church, and that the Plaintiff being Rector of the Parish where they grew, claims them as his Tithes, and demand Judgment, if the Kings Court will hold plea, by such plea the Kings Court shall be ousted of Jurisdiction, but if the dispute in such Action fall out in pleading to be about the bounds of the Parishes, then the Kings Court shall not be ousted of Jurisdiction.

* 5 H.6.10.

50 E.3.20.

38 E.3.6.

39 E.3.23.

5 H. 5.10.

1 H.6.5.

44 E.3.39.

20 H. 6.17.

2 H. 4.15.

31 H. 6.11.

2 E.4.15.

* And so it is, if the question be between the Farmer, Bayly, or Servant of the one Parson, and the Farmer, Bayly, &c. of

of the other, or the other Parson himself; in such cases, though the dispute does appear to be concerning the right of Tithes between the Parsons, yet the Court shall not be ousted of the Jurisdiction because they are not both Clergymen.

But in all these cases where the right of Tithes is in dispute between one Parson and another, in whose names soever the Suit is in the Spiritual Court, I conceive no prohibition lies, if both Parsons come in by the same Title of patronage, so that the right of patronage came not in dispute.

And I take the Law to be the same 40 E. 3. 28.
where the question arises between the 35 H. 6. 35.
Parson who is Patron, and the Vicar, whether Tithes belong to the Parson or Vicar.

But where the right of Tithes is controverted between two Clergymen which come into their Churches by several Patrons, there in that case the Spiritual Court hath not Jurisdiction to determine the right of the Tithes, if they amount to the fourth part of the yearly value of the Church; but the Title is to be determined by writ of right of Advowson of Tithes as shall be shewed more at large, when I shall come to shew in what cases the right of Tithes is determinable in the Kings Court. But in that case

*West. 2. c. 5.
Circumspecte
Agatis,
Articuli Cleri.
cap. 2.
Where the Spi-
ritual Court
cannot deter-
mine the right
of Tithes.*

F.N.B.37.E.

Spiritual Jurisdiction confirmed by several Acts of Parliament.

By the Statute de circumspēte Agatis.

That it is an Act of Parliament.
2 Inst. 487.
Seld hist. de-
cim. 424.

case if the Tithes in question do not amount to the fourth part of the value of the Church, the Ecclesiastical Court may determine the right in a spoliati-
on.

But the Jurisdiction of the Ecclesiastical Courts to hold Plea for the subtraction and withholding of Tithes, as the same hath been very antient, so it hath been confirmed by several Acts of Parliament, as I shall shew; the first of which is that of *circumspēte agatis*, made in the ninth Year of E.1. by which it is enacted, That, *Si Rector petat versus parochianos oblationes & decimas debitas & consuetas; vel si Rector petat versus Rectorem de decimis majoribus vel minoribus, dummodo non petatur quarta pars valoris Ecclesie; Item si Rector petat mortuarium in partibus ubi mortuarium dari consuevit; Item si prelatus alicujus Ecclesie vel advocatus petat à Rectore pensionem sibi debitam, omnes hujusmodi petitiones sunt faciende in Foro Ecclesiastico, &c.* and concludes, *In omnibus predictis casibus habet Index Ecclesiasticus cognoscere, Regia prohibitionē non obstante.*

There hath been some question made whether this were an Act of Parliament or not, but it is proved by Sir Edward Coke by many unanswerable reasons to be an Act of Parliament, and so agreed by Mr. Selden, and almost all others.

Secondly,

Chap. 26 *De* Law of Tithes.

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Secondly, admitting it to be an act of Parliament, it hath been doubted whether it extended further than to the Diocess of *Normich*, it seeming to be appropriated by the penning to that Diocess alone; but by the general opinion of the learned it extends to all other Diocesses, and *Normich* is only put by way of example. *And extends to all Eng. land.* 2 Inst. 487.

And the Prudent penning of this Law by our Ancestors deserves the Readers observation, how careful they were to preserve their own rights, and avoid the incroachments of the Clergy, who were in those daies very powerful: for first, they would not give way to the Canons to destroy their Customs and Prescriptions allowed by the common Law, and therefore give the Spiritual Judge Jurisdiction of Tithes and Oblations (*debitas & consuetas*) only. *Observations in the penning of it.*

2. They would not expose their rights of Patronage to the determination of the Spiritual Judge, and therefore this condition is annexed, *Dummodo non petatur quarta pars valoris Ecclesie.*

3 Lastly, they would not subject themselves to pay Mortuaries according to the Canon Law, but *ubi dari consuevit*: so that if any suit were sued for Tithes, Offerings, Mortuaries, not due as well by custome as common Law, a Prohibition lay, and doth lye at this day.

B b

The

The Parsons Councelloz: Part II.

The second Statute concerning the Jurisdiction of the Spiritual Courts in cases of Tithes, is the Statute of *Articuli Cleri*, but I shall pass it by here till I come to speak of the Writ of *Judicavit*.

18 E.3. c.7.

The next Statute I meet with that concerns this matter, is the Statute of 18 E. 3. cap. 7. which I shall pass by also till I come to speak of the determination of the right of Tithes by *scire facias*.

1 R.2.c.13.

There was another Statute made 1 R. 2. it is cap. 13. for the punishing of such as indicted those that sued in the Spiritual Courts for subtraction of Tithes, or compelled them to desist by Bonds or otherwise; but that Law being now become obsolete, and besides my purpose, I shall proceed to the Statute of 27 H. 8. by which it is enacted,

27 H.8. c.20.

That every Subject of England, Ireland, Wales, Callais, and the Marches of the same, should according to the Ecclesiastical Laws and Ordinances of the Church of England, and after the laudable Usages and Customs of the Parishes or other places where he dwells or occupies, shall yield and pay his Tithes and Offerings, and other duties of holy Church: and that for subtraction of such Tithes, &c. may by due process of the King's Ecclesiastical Laws convent the Person, &c. so offending, before his Ordinary or other competent Judge, &c. having
Authority

Authority to hear and determine the right of Tithes, &c. And to compel the party offending to do and yield their duties in that behalf. And in case the Ordinary, &c. for any contempt, contumacy, disobedience or other misdemeanour of the Party Defendant shall make information to any of the Kings most Honourable Council, or to the Justices of the Peace of the Shire where the offender dwells, to assist and aid the Ordinary, &c. and to order and reform any such Person, in any cause before rehearsed, that then he of the Kings Council, or such two Justices of the Peace, whereof one to be of the Quorum, to whom such information or request shall be made, shall have power to attach, or cause to be attached the Person, or, &c. against whom such information shall be made, and to commit the same Persons to Ward, there to remain without Bail or Mainprise untill he, &c. shall have found sufficient Surety to be bound by Recognizance or otherwise, before the Kings Councillor, or, &c. or any other like Councillors, or Justices, &c. to the use of the King, to give due obedience to the Process and Proceedings, Decrees and Sentence of the Ecclesiastical Court wherein such Suit, &c. shall depend or be. And further gives power to the said Councillor, or to two Justices of the Peace, whereof one to be of the Quorum, to take, receive, and Record such Recognizance and Bonds.

There is a Proviso in this Act, that it shall not extend to London. Bb 2 And

The Parsons Counsellor: Part II.

And another Proviso that the Party sued may have all legal Defences, Appeals and Prohibitions.

*Observations
upon this Law.*

And it is to be observed that this law extends to all sort of Tithes, mixt and Personal, as well as predial.

Next he that will have the benefit of this Law, must sue for the single value, and not for the double value upon the Statute of 2 E. 6.

Thirdly, the plaintiff in the Ecclesiastical Court may proceed upon this Act for contempt, contumacy or misdemeanour, as well before as after Sentence.

Fourthly, The security upon this Act may as well be by bond as Recognizance.

Lastly, observe the wary penning of this Act; they must pay their Tithes and other Church Duties, according to the Ecclesiastical Laws and laudable Customs and usages of the place, next, if it be demanded before whom suit upon this Statute shall be made, it is answered by the Statute it self, it must be before such Judge as hath Jurisdiction of the Cause, so that it creates or enlarges no Jurisdiction.

32 H. 8. c. 7.

The next Act of Parliament concerning this matter is the Statute of 32 H. 8. by which it is enacted, that all and singular persons, &c. shall fully, truly and effectually

effectually divide, set out, yield or pay all and singular Tithes and Offerings, according to the lawful Customs and Usages of the Parishes and places where, &c. and in case any person, &c. to detain or with hold any of the said Tithes or Offerings, or any part or parcel thereof, that then the person Lay or, &c. shall and may convent the person or &c. before the Ordinary, &c. according to the Ecclesiastical Laws, &c. and so proceed to Sentence according to the Process and course of the Ecclesiastical Laws.

And that if any party appeal against the Judges Sentence, he shall then assess the Costs of his Suit therein before expended, and shall compel the Appellant to pay the said costs by the compulsory Process and Censures of the said Laws, taking security of the said Party, to whom the said costs shall be paid, to repay the same, if the Appeal be adjudged against him.

And if any Person after sentence definitive given against him, shall obstinately and wilfully refuse to pay their Tithes, or the sum adjudged, that then two Justices of the Peace, whereof one shall be of the Quorum, shall, &c. upon Information, Certificate, or complaint to them made by writing, by the said Ecclesiastical Judg. &c. cause the party refusing to be attached and committed to the next Goal, there to remain till he, &c. have found sufficient sureties to be bound by Recognizance or otherwise before the same

Justices to the use of the King to perform the said definitive sentence.

Provided that no person, or, &c. to be sued or otherwise compelled, to yield, give or pay any mannner of Tithes for any Mannor, Lands, &c. which by the Laws or Statutes of this Realm are discharged, or not chargeable with, &c. Tithes.

Provided that this Act shall not extend, or be expounded to give any remedy, cause of Action, or Suit in the Courts Temporal against any person, &c. which shall refuse or deny to set out his or their Tithes, or which shall detain, with-hold or refuse to pay his Tithes or Offerings, or any parcel thereof: but that in all such Cases the person or persons, being Ecclesiastical or Lay Persons, having cause to demand or have the said Tithes or Offerings, or thereby wronged or grieved, shall take and have their remedy for their said Tithes and Offerings in every such Case in the Spiritual Courts, according to the Ordinance in the former Part of the said Act mentioned, and not otherwise, any thing, &c.

*Observations
upon this
Statute.*

1. It appears by the Preamble of this Law, that this Act was particularly designed for the relief of Impropriators, who before this Act were not capacitated to sue in the Spiritual Courts for the subtraction of Tithes, and were hard put to it to find any other relief.

2. Where-by the former Act the party

ty for Contumacy, &c. might be compelled to give security before Sentence, in this case of the Lay Impropriators the Party cannot be compelled to give security till after definitive Sentence.

3. Upon this Law there must be two Sureties at least, upon the former one sufficed.

4. The security in this, as the former, may be by bond or Recognizance.

5. Whosoever will have the benefit of this Act, must sue particularly upon this Law for the single value, and not for the double value upon the Stat. of 2 E-6.

6. This Law extends, as the former did, to all manner of Tithes and Offerings.

7. London is excepted out of this Act, as it was in the former.

8. This Law only extends to customary Tithes, and not for Tithes due by Canon and Ecclesiastical Laws.

9. This Act only extends to such as shall obstinately and wilfully refuse to perform the Sentence of the Ecclesiastical Judge, and for no other contempt or neglect.

10. Lastly, this Act restrains the Suit to the Ecclesiastical Court upon this Statute, otherwise an Action, as should seem, might have been brought at Common Law upon this Statute for not setting forth, &c. of their Tithes. But

But diverse defects appearing in this Law, especially to the Lay-Improprators, they obtained a more effectual law for their purpose in the 2 E. 6. by which it is enacted.

Stat. 2.E. 6.
cap. 13.

That if any Person carry away his Corn or Hay, or other predial Tithes before the Tithes thereof be set forth, or willingly with draw his Tithes of the same, &c. that then upon due proof thereof made before the Spiritual Judge, or any other Judge to whom heretofore he might have made complaint, the Party so carrying away, withdrawing, letting or stopping, shall pay double the value of the Tenth or Tithes so taken, lost, withdrawn, or carried away, over and besides the costs charges and expence of the Suit in the same, the same to be recovered before the Ecclesiastical Judge according to the Ecclesiastical Laws.

There is a proviso in this Act, that gives occasion of many prohibitions to this effect.

That no person shall be sued, or otherwise compelled to yield, give or pay any manner of Tithes for any Mannors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledge or Prescription are not chargeable with the payment of such Tithes, or that be discharged by any Composition real.

This Paragraph of this Statute as to the double value, extends only to predial Tithes, as Corn, Hay, Wood, Flax, Hemp, Fruit, &c. but for mixt and personal

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sonal Tithes, there is a provision after in this Act.

There is also another Proviso in this Statute as in the former, which restrains *Sole Jurisdiction to the Spiritual Courts.* all Suits for Subtraction of Tithes to be sued in the Ecclesiastical Court, and that it shall not be lawful to sue any withholder of Tithes, obventions, &c. in any other Court; and that if the Ecclesiastical Judge shall give Sentence, no Prohibition or appeal depending, and the Party condemned do not obey the Sentence, that then such Judge may excommunicate the Party, and if he wilfully stand excommunicated by the space of forty days next after publication thereof in the Parish Church, of the place or Parishes, where the party excommunicated is dwelling or most abiding, then the Judge Ecclesiastical may certify the King in Chancery, and require *Excommunicato capiendo given.* Process of Excommunicato capiendo.

This Clause extends to all manner of Tithes, Offerings, &c. but this gives no double damages for them, as the former Clause doth for Predial Tithes.

There is another Clause in this Act, that gives ground likewise for many Prohibitions which is to this effect, That the aforesaid Clause shall not extend to give any Judge ecclesiastical jurisdiction to hold plea of any matter, cause or thing repugnant to, or against the effect, intent or meaning of the Stat. of Westm. the second cap. 3 the Stat. of Articuli Cleri, circumstance

ſpecte Agatis, ſylvæ cœduæ, the *Treatiſe de Regia Prohibitione Stat. 1 E. 3. cap. 10. or any of them, or to hold Plea in any matter, wherein the Kings Court ought to have Jurisdiction, any thing therein, &c.*

Note, that by theſe three Statutes before mentioned the Jurisdiction of Tithes is confirmed and reſtrained to the Eccleſiaſtical Courts.

*Observations
upon all the
Statutes.*

That by the *Stat. of 27 H. 8.* Proceſs for contempt is given before Sentence.

By that of *32 H. 8.* Proceſs for contempt is given after Sentence definitive: but obſerve the different penning.

And by this laſt ſtatute a Writ of *excommunicato capiendo* is given, if the party continue obſtinate by the ſpace of forty daies, after an Excommunication publiſhed againſt him: ſo that a man would think here were as good remedies provided for the Recovery of tithes in the Eccleſiaſtical Court as could be imagined; but the interruptions that are frequently given by Prohibitions, as ſhall be ſhewed hereafter in due place, very much frustrate the effect of the proceedings in thoſe Courts.

2 Inſt. 490.

And note, that a *modus decimandi* is properly to be ſued for in the Eccleſiaſtical Courts.

And ſo having ſaid ſomuch concerning the Eccleſiaſtical Jurisdiction for the

Chap. 26. Of Law of Tithes.

379

the determining the right of Tithes, and relief against subtraction of Tithes, I shall in the next place shew, in what Courts, in what Cases, and in what manner they are determinable in the Temporal Courts.

Mr. *Selden* in his History of Tithes reckons up five manner of ways, whereby the right of Tithes may be determined in the Temporal Courts. 1. In prohibitions, whereby the Spiritual Courts are forbidden to hold Plea, where matters happen which are only triable in the Kings Court, or where those courts proceed against any statute at the common Law, &c. 2. By Writs of Right of Advowson; whereunto may be annexed the writ of *Judicavit*. 3. By *Scire facias*. 4. By process mandatory to command the payment of Tithes. 5. By Suits and Actions upon the before mentioned Statute of 27 H. 8. 32 H. 8. and of 2 E. 6. to which may be added the Trials at common Law by Actions of Trespas, Assise, &c. And of these in order.

Selden 422: In what cases the Temporal Courts have, and may determine the Right of Tithes.

And first of Prohibitions, which are frequently obtained out of the Courts at *Westminster*, Courts of great Sessions in *Wales*, and the County *Palatines*, &c. upon these grounds following.

In what cases Prohibitions use to be granted.

First upon a *modus decimandi*, where the Defendant in the Spiritual Court suggests, that he and all those whose Estate

Hob. 286.. 42.. 247..

state

2 Inst. 6 10.
Co. entr. 459.
d. 460. b.
Co. 2. 44.
Dyer 74. p. 49
Modus deci-
mandi.

state he hath in the Lands, &c. in which
&c. have time out of mind paid so much
yearly in mony, or given some other re-
compence in satisfaction of all the
Tithes arising upon the Lands, or of all
the Tithe Hay or Corn. &c. this manner
of Tithing being by Prescription, which
is only and properly triable at Com-
mon Law, if pleaded in the Spiritual
Court or not pleaded, or allowed or
not allowed as a good Plea, there is a
ground of a Prohibition; and what
Prescriptions and *modus decimandi* are in
this case approved of by the common
Law, I must refer the Reader to the
proper Chapter before.

Cap. 6. antea

Bounds of the
Parish.

Co. 7. 44 b.
Roll. 2. 291. l.
1, &c.
Cro. El. 228.

Monastery
Lands dischar-
ged of Tithes.

Co. Ent. 450.
C. 453. d. Por-
ter vers. Ro-
chester. M. 6.
Jac. C. B.
Roll. 2. 307. v.

13.
Suits for
things not
Tithable.

2. If the Bounds of a Parish come in
dispute, whether the place where the
Tithes arise be in this or that Parish,
this is a matter triable by Jury, and
therefore upon a suggestion of this mat-
ter a Prohibition will be granted.

3. If Lands be pretended to be dis-
charged of Tithes by the Statute of 31
H. 8. or any other Statute, a Prohibition
lies, because it properly belongs to
the Judges of the common Law to ex-
pound all Statutes, &c. so if the sugges-
tion be grounded upon the Stat. of 2 E.
6. for barren grounds, &c.

4. If one sues in the spiritual courts
for the Tithes of things not Tithable by
the common Law, for which see cap. 12.
before,

before, or for the Tithes of great Woods above twenty years growth, it is a ground for a Prohibition.

5. If a Suit be brought in the Spiritual Court for the taking and carrying away of Tithes, after the Tithes are set forth and divided from the nine parts by the Parishioner, unless the Suit be between two Ecclesiastical persons in their proper rights, a Prohibition lies, because tis matter triable at common Law.

Roll 2. 186. f. 41.

For matters determinable at Common Law.

38 E 3.5.

6. If the Spiritual Court will not admit a Legal defence, as a Release, an accord with satisfaction, an award, &c. or if the Spiritual Judge refuse to admit the Defendant to traverse the Plaintiffs Title, that he is not Parson, Vicar, &c. a prohibition will be granted, but if the Defendant in the spiritual Court alledge such matter against the Plaintiffs there, which is properly triable in that court, as Simony, &c. in such case no prohibition will be granted.

Cro. El. 228. 642.

Rolls 2. 302.

q. 19. 23. 24. v. 16.

For irregular

Proceedings of the Spiritual Courts.

7. If the Spiritual Court shall disallow the proof of the setting forth of the Tithes by one witness, Prohibitions have been granted. *Contra co.* 12. 65. *Idea quero.*

Cro. El. 566.

Roll 2. 300 q.

6. 8. 9 301. q.

14. 15.

Disallow proof by one witness.

There are many more cases, wherein Prohibitions have been granted, but these are the most frequent, and may serve for a taste. And indeed prohibitions

tions

tions are granted in all cases, where they exceed their Jurisdiction.

2 E.6.c.13.
must produce
a Copy of the
Libel.

By the Statute of 2 E.6. It is enacted, that no Prohibition shall be granted in matters of Tithes in any of the Kings Courts, unless the Party that requires the same bring and deliver to some of the Court, where he prays such Prohibition, a true copy of the Libel subscribed by the hand of the Party, and the suggestion underwritten, and that if he do not prove that suggestion by two honest substantial witnesses in the same Court within six Months after the Prohibition granted and awarded, then the Party delayed shall have a consultation without delay, and double costs to be assessed by the Court, where the consultation is so granted, to be recovered in an Action of debt, &c. wherein no essoin, &c. shall be allowed.

Must prove the
Suggestion
within six
Months.

Observations
upon this
Clause.
Hoskins vers.
Stroade.
T.5.Car.ro.
988.B.R.
Cockeram.
vers. Davyes.
Hill.22.Jac.
Pop.159.
Jones 231.
Cro.Car.308.
2 Inst.662.

This clause of this Statute seems to give the Parson, Vicar, &c. a double remedy where the suggestion is not proved within six Months, that is a consultation, and secondly, double costs. But in both these they are in some measure frustrated in their expectations: for as to the first, after such consultation a new prohibition may be obtained; and besides, there are several cases wherein the party cannot, or needs not prove his suggestion, notwithstanding this Statute, as where the suggestion is in the negative, which regularly cannot be proved:

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proved: secondly if the suggestion be grounded upon any matter of Law, as in case the Suit be for things not Tithable, great Wood, things *per a natura* &c. this appearing in the libel, a prohibition lies, and there needs no proof of the suggestion. 2 Inst. 662:

If a suggestion contain two matters, and the one ought to be proved within 6 months, and the other here, though the party fail in proving that part that ought within this Law to have been proved, yet no consultation shall in this case be granted. Cobbe. verf. Hunt. 5 Jac. B. R.

To the second here is double costs to be awarded for want of proving the suggestion, and no execution given but an Action of debt to recover it, which is but a bad remedy in this case, when the party shall only recover the costs, and have no costs allowed him in the second Suit.

So upon the whole matter here's a plausible cause in an Act of Parliament, and little benefit by it.

It is to be observed that some prohibitions are in themselves peremptory, as where there is a suit in the spiritual Court for things not Tithable, and appearing so in the Libel, in which cases a consultation shall never be granted: and so it is, if the suit be for carrying away Tithes after they are set forth, unless it be

In what Case Prohibitions are Peremptory in themselves

The Parsons Counsellor: Part II.

be between Clergy men in their own rights: and so it is where the matter is determinable at common Law, and the same appearing in the Libel.

Where ex post facto.

But where a *modus decimandi*, a custom of not Tithing, a priviledge within the statute of 31 H. 8. for Abbey Lands, & in such other cases, where the suggestion is grounded upon matter of fact, which is doubtful to the court, those prohibitions are not peremptory till the matter of fact be tried and found true by verdict.

How to prosecute and defend Prohibitions

The manner of proceeding in the obtaining, prosecuting and defending of prohibitions is in this manner.

The party that is sued in the spiritual Court, and desires a prohibition, moves the Court, and for the most part makes his suggestion *ore tenus* at Bar: if the suggestion be such upon which a prohibition cannot be denied, the Court usually gives rule, that the party shall at a certain day come to shew cause why a prohibition should not be granted, and that in the interim proceedings in the spiritual Court should be stayed: upon serving this rule in due time, and oath made of it, if the Plaintiff in the spiritual Court do not appear at the day, and shew good cause to the contrary, the prohibition is awarded, and the rule made peremptory; but if the Court be doubtful

doubtful, whether the matter be sufficient to ground a prohibition or no, then, or at the Prayer of the Defendant the Court will order the Plaintiff to draw up his suggestion into form, and then the Court will consider of the matter, or the Defendant may demur to it and the matter argued by learned Counsel, and then the Court as they see cause, will either award the prohibition, or discharge the rule. But if the matter suggested be a good ground for a prohibition, but is in itself false or doubtful, the Defendant in the prohibition may demand a declaration of the Plaintiffs Attorny which is grounded upon a supposed attachment for not obeying the prohibition; to which the Defendant may plead as Counsel shall advise him, and Traverse, and put in issue the matter of the said suggestion or such other matter as Counsel shall advise, which is to be tryed by a Jury of the Country; if it pass with the Plaintiff, then is the prohibition become peremptory; but if the Verdict pass for the Defendant regularly a consultation is awarded, that is, a Writ directed to the Judge of the Spiritual Court; authorising him to proceed notwithstanding the prohibition.

Now* by a Statute made in the 50 E.3. it is enacted, That where a consultation is once duly granted upon a prohibition made to the Judge of Holy Church, that

Star. 50. E. 3.

cap. 4.

Where a Prohibition may be had after Consultation.

the same Judge may proceed in the Cause by virtue of the same consultation notwithstanding any other prohibition thereupon to be delivered; provided always that the matter in the Libel of the said Cause be not ingrossed, enlarged, or otherwise changed.

Jones 231.
Cro. Car. 208.
Poph. 159, &c.

But this Statute has been several times held to extend to such Causes only where consultations are judicially granted upon examination of the Cause, and not where they pass of course as for want of proof of a suggestion, or upon non-suit for want of prosecution or such like.

Co. 5. 68. a.
Co. 12. Rep.
44.
Consultations
sub modo.

Sometimes the Court grants a consultation *sub modo*, as where the matter of the Libel is in the disjunctive, and as to one part the Court has Jurisdiction, and to the other not, there the Court may grant a consultation as to that part that the Spiritual Court has Jurisdiction of, and let the prohibition stand as to the other.

Sommers
vers. Sir Rich.
Bulkeley. T.
32 El. B.R.
Poph. 58.
Hob. 179.
*How the six
Months to
prove a Sug-
gestion is to be
accounted.*
Co. 5. 68. a.

Or a consultation may be granted, so that the Spiritual Court allow such plea, or such proof.

Note that the six Months for the proof of the suggestion is according to the Kalendar, and not twenty eight days to the Month.

And note in the cases before put the prohibition shall be general, and the consultation special, *quoad*, &c.

And

And it is taken for a Rule in Sir Henry Hobarts reports, that if a prohibition be faulty, yet the Defendant shall never have a consultation, if it appear to the Court that the suit in the Ecclesiastical Court was not well grounded.

Where no Consultation shall be granted upon a Verdict for the Defendant.
Hob. 300.
Dyer 171.p.
56.

And therefore where one sued for the Tithe Corn of sixty Acres of Land, and the Defendant suggested, it was barren Ground, and paid no Tithe, and pray'd and had a prohibition, and the Jury found that thirty Acres of it were so, and that the other thirty were barren, but had paid Tithe, Wool, and Lamb, and a consultation denied because it appeared the Plaintiff had no cause to sue for Tithe Corn.

So in a prohibition it was suggested, that the Parson had twenty Acres of Land, and ten Acres of Wood in discharge of all Tithes, and the proof was that he had twenty Acres of Land only, and a consultation denied, because it appeared he had no cause of suit.

More 9. 11.
Austen vers.
Pigot Cro.
El. 736.

Regularly a prohibition ought not to be granted after sentence, unless it appear the sentence were obtained in the vacation, or by surprise, so that the party had not time to pray it sooner, or upon matter arising after the sentence, and the granting or not granting rests much in the discretion of the Court.

Prohibition after Sentence.
Hob. 97.
Noy 70.
Winch 8.
Cro. El. 595.
Hob. 67.

After Consultation.

Hob. 286.

Hughes 245.
Hill. 11. Jac.
C.B. B Idum
vers. Geery.

*The virtue and
vices of Prohibi-
tions.*

And so sometimes upon new matter arising after a consultation a prohibition may be granted, notwithstanding the aforesaid Statute of 50 E.3. as where the Spiritual Court after consultation proceeds to try matter determinable only at Law, or if after a consultation the Spiritual Court will make an unjust decree as to award treble damages: and so in all cases if the Spiritual Judge will proceed illegally, and against the Common Law, after consultation a new prohibition may thereupon be obtained, but not upon any matter alledged in the Libel.

Prohibitions of themselves are excellent things, where they are used upon just, legal, and true grounds; and have often avoided the usurpations of the Popes and Spiritual Courts: but by the corruption of these later times they are grown very grievous to the Clergy, being too oft granted upon feigned and untrue suggestions, which it is impossible the Judges should foresee without the Spirit of Prophecy. And I think I may presume to say that where one was granted before Queen Elizabeths time, there have been a hundred granted in this last Age; and they are a very great delay and charge to the Clergy; and it were well, in my poor Judgment, if the Reverend Judges would think of some way to restrain them, or to make them pay well for their delay by making

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making the Plaintiff enter into recognizance to pay such costs, as the Court out of which they issue, should award, in case they should not prove their suggestion in convenient time, or some such other course as they in their great wisdom shall think just and meet.

And so having done with the first manner of determining the right of Tithes at the Common Law, I shall proceed to the second, which is by Writ of Right of Advowson, to which likewise belongs the Writ of *Indicavit*, which in it self is no other but a meer prohibition to the Ecclesiastical Judge, and first of the *Indicavit*.

There have been some opinions that the Writ of *Indicavit* is grounded upon the Statute of *Circumspecte Agatis* and *Articuli Cleri* cap. 2. But it is very clear this Writ lay at Common Law; and it appears in our Books that it was the opinion of some learned Judges that it lay in all cases where the right of Patronage might come in dispute, and of this opinion Sir *Edward Coke* seems to be.

And *Brañon* a Learned Judge who wrote in the time of *H. 3.* hath the very Writ in his Book, which was long before the Statutes abovementioned; and he saith that this Writ lies *si contentio fuerit inter Rectores de aliquibus decimis*;

Indicavit at Common Law.

38 H. 6. 2c. 3.
per moile.

4 E. 3. 27. b.
per Martham.

2 Inst. 364.

Lay for any

Tithes.

Brañon l. 5.

c. 4. 402. b.

For a Sixth
part.

Articuli Cleri
c.2.

2 Inst. 491.
Where the In-
dicavit ly:.

*qua estimari possunt usq; ad quartam, quin-
tam vel sextam partem advocacionis. Et
ultra quam partem non extenditur prohibi-
tio, prout sibi videtur.*

But whatsoever the Common Law
was, it is now settled by the Statute of
Circumspecte Agatis, and *Articuli Cleri*
cap. 2. That unless at least the Tithes
in demand be of the fourth part of the
value of the Church, this Writ lyeth not:
The Statute of *Articuli Cleri*. cap. 2. is, *si sit
contentio de jure decimarum originem ha-
bens de jure patronatus, & earundem deci-
marum quantitas ascendat ad quartam par-
tem bonorum Ecclesie, locum habeat Regia
prohibitio*, that is to say a Writ of *Indi-
cavit*.

And this Writ lies as hath been said
where one Parson demands Tithes against
another Parson to the fourth part of the
value of the Church or more, which
come into their Churches by several Pa-
trons, for if the Incumbents come in both
by one Patron the right of the Advowson
cannot come in question, and by conse-
quence this Writ lies not.

Suppose there be a Parson with a Vi-
carage indowed, whereof the Parson is
Patron; and a Suit be for Tithes belong-
ing to the Parson, to the value of a fourth
part of the Parsonage, but not to the
fourth part of the Parsonage & Vicarage:
it should seem in this case, though the Vi-
carage

carage were derived out of the Parsonage, and may again be re-united to that; nevertheless by reason of the several Patrons an *Indicavit* will lye in this Case.

And it is to be observed that this Writ doth not lye before Libel, nor after definitive sentence, for the party that prays this Writ must shew a Copy of the Libel in the Court of Chancery before he can have it.

F.N.B. 45.b.c.
12 E. 4. 13.
When.

And though the Law be restrained at this day to a fourth part of the value of the Church, where before it was at large, Yet the form of the Writ remains, and if the thing in demand be under the fourth part of the value, it must be shewed in pleading by the other side.

2 Inst. 3. 64.
The Form of
the Writ not
altered by the
Statutes.

And this Writ lyes as well for offerings, as for Tithes: When such Writ is sued and served, and the proceeding in the Spiritual Court stopt, then the Plaintiff there is to sue his Writ of right of Advowson of such a portion of Tithes as the case requires, and this is given by the Statute of West. 2.

F.N.B. 45.b.
Lyes of Offerings.

cap. 5. in these words, *Et cum per breve de Indicavit impeditur Rector alicujus Ecclesie ad petendam decimas in vicina parochia, habeat patronus Rectori sic impedito breve ad petendam advocationem decimarum petitarum*: but this must be intended where the Patron has the Fee-simple of the Advowson. And the *Indicavit* is to be brought in the name of the Patron and his

Westm. 2.c.5.

By whom.

F.N.B. 45.b.
*But where the
 same Person is
 Patron and
 Incumbent,
 fu. solem.*
 12 E.4.13.b.7.

Clerk against the other Incumbent, that
 sues in the Ecclesiastical Court and his
 Patron; but the Writ of right of Advow-
 son is to be sued by the one Patron against
 the other, and the Patron demandant
 shall alledge examples taken by his In-
 cumbent of great and small Tithes:

F.N.B. 30.b.
*The relief of
 Tenant in tail,
 Purveyance,
 &c.*
 2 Inst. 364.

But if the Patron against whom the
Indicavit is sued, be but Tenant in Tail,
 Tenant for Life or Years, then he cannot
 maintain a Writ of right, but must de-
 mand and appear to a Declaration upon
 an attachment, and plead his Title, which
 must be proceeded in, as in other prohibi-
 tions, and when the Title of the Pa-
 tronage is determined at Common Law,
 then the cause must be remitted to the
 Ecclesiastical Court, where Sentence must
 be given according as the Law has deter-
 mined the Right, and this appears by the
 Form of the *Indicavit*, which is spec-
 ial, *Vobis precipimus ne placitum illud te-
 neatis, donec discussum fuerit in Curia no-
 stra ad quem illorum pertineat ejusdem Ec-
 clesie advocatio.*

*The Proceed-
 ing remitted.*

Regist. 36.a.
 35.b.

And there is a note in the Register,
 that this Writ lyeth of a Vicarage, Pre-
 bend, & *aliis similibus* as well as of a
 Rectory: and the Form of the Writ is
 thus, *Præcipe A. quod reddat B. advocatio-
 nem decimarum quarta parte vel medietat-
 is Ecclesie, &c.*

F.N.B. 30.E.

But

But these Writs as well as other real Actions, are grown obsolete and seldom put in practice, and therefore thus much shall suffice of the nature and proceeding in them.

The third manner of proceeding for the determining the Right of Tithes at Common Law was by *Scire facias*, which was grounded either upon Letters Patents, Fines, or other Judicial Records, of which Mr. *Selden* instances several Presidents; but this manner of Trial being taken away by the Stat. of 18 E. 3. c. 7. I shall say no more of it.

Scire facias.
18 E. 3. c. 7.
Seldens hist.
decim. 439.
Gr.
Co. Inst. 2.
640.
2 Inst 640,
Gr.
Writs mandatory.

The fourth sort of determining the Right of Tithes at Common Law, mentioned by Mr. *Selden*, is Writs Mandatory, commanding the payment thereof, whereof he gives some few Instances, but these having never been frequent, and for long time discontinued and grown out of use, I will not trouble the Reader with them, but refer the curious Reader to Mr. *Seldens* History of Tithes, and proceed to the fifth manner of determining the Right of Tithes at the Common Law, which is grounded upon the late Statutes.

Selden 444.
Gr.

For the Statute of 27 H. 8. there hath been sufficient said already; for that of 32 H. 8. that concerns the Temporal Jurisdiction, I shall leave it till the last, and proceed to shew what Authority is given to

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2 E. 6. c. 13.

Treble value.

to the Temporal Courts by the Statute of 2 E. 6. cap. 13. being the first Law that ever gave the Temporal Courts Jurisdiction for the Parson against the Parishioners for subtraction of Tithes, in which there is a clause to this effect.

And it is enacted by that Statute after it has confirmed the former Statutes of 27 H. 8. c. 20. and 32 H. 8. c. 7. That every of the Kings Subjects should from thenceforth truly and justly without fraud or guile set out, yield and pay all manner of their predial Tithes in their proper kinds, as they arise and happen in such manner and form as hath been of Right yielded and paid within forty years next before, &c. or of Right or Custom ought to have been paid, and that no person thenceforth should take or carry away such or like Tithes, which had been yielded or paid within the said forty years, or of right ought to have been paid in the place or places Tithable of the same, before he hath justly divided or set forth for the Tithes thereof, the tenth part of the same, or otherwise agreed for the same Tithes with the Parson, &c. under the pain of the forfeiture of the treble value of the Tithes so taken and carried away.

This Clause being compared with the former Clause, almost penned in the same words for the double value, would make a Man at a stand what the meaning of the Parliament

Parliament was, and it was forty years (when almost all that were at the making of this Act were dead) before it was found out, that an Action of Debt lay upon this Clause at Common Law for the treble damages: To wit *Pasch. 29. Eliz.* In the Exchequer in an Information by the Queens Attorney against one *Wood* for the treble value, as forfeited to the Queen. In which Cause it was resolved, that an Action of Debt lay at the Common Law for the treble damage, for not setting forth of Tithes; for wheresoever an Act of Parliament gives a forfeiture against him, that doth dispossess, &c. the Owner of his property, as here he doth of his Tithes, there the forfeiture is given to the Party grieved or dispossessed. Since which resolution Actions of Debt have been frequently brought in all the Courts of *Westminster* by Parsons, Vicars, Proprietors, Owners and Farmers of Tithes, as well Lay as Spiritual upon this Statute, but being so long before it was found out, that an Action lay at Common Law upon this Statute, the Plaintiffs in the recital of the Statute alledged it to be made the fourth of *February. 2 E. 6.* whereas in truth the Parliament begun the 1 of *E. 6.* and was held by Prorogation the fourth of *February. 2 E. 6.* And this being discovered in an Action between *Oliver* and *Colier. P. 6. Jac. B. R.* brought

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1 Brownlow.
100.
Yelver. 126.
Dyer 171. p.
6.
Stile 122.

brought upon this Statute, wherein the Statute was misrecited as aforesaid, and exception taken to it in arrest of Judgment, the Court upon good advisement over-ruled the exception by reason of the multitude of Precedents, and affirmed the Rule, that *multitudo errantium parit erro-ri Patrocinium*.

Now considering that this is become a very frequent Action in use, I conceive it will not be improper to the present occasion to communicate to the Reader, what I have observed and learned in this kind of Actions, not only concerning the Forms of Declarations, Pleadings, Verdicts and Judgments, but likewise what evidence is necessary upon the general Issues of *non culpa*, and *nil debet*, for the Plaintiff and Defendant: And in the first Case consider in what Cases, and by whom, and against whom this Action may be brought.

Hutton 121.
122.

By whom, and
against whom,
Actions lie in
this Statute.

If two be Joynt Tenants, and they enter and occupy joyntly, the Action must be brought against them joyntly, but if one only enter and then occupy, the Action must be brought against him, that only occupies alone.

But if there be two Tenants in Common, and one of them sets out his Tiche, and the other carries it all away, there the Action shall be brought against him, that carries it all away alone.

If

If the Husband and Wife in the right of the Wife be intitled to Tithes, they shall joyn in this Action, because the damage is to survive: but a Parson and a Vicar cannot joyn, but if they joyn in a Lease to a third person, their Farmer may sue for all in one Action; but in the first Case, I see no reason but that the Husband may bring the Action alone, and so I have known it often done.

Noy 136. & 3.
1 Brown. 86.
Yelv. 63.
Cro. Jac. 68.

In an Action brought upon this Statute, the Severance was alledged before the sowing, and exception taken after Verdict; but the Exception was disallowed, because the shewing of the sowing was superfluous, and so aided by the Verdict.

*the Form of
the Declar.
Bellet vers.
Henworth P.
1657. B. R.*

The taking was alledged after the Plaintiffs term was ended, and yet held good.

Cro. Car. 324.

M. 40, and 41 Eliz. A Judgment was arrested, because the Suit was brought *ad respondend. tam Domino Regi quam Parti*; but this Case I very much doubt, for being against a Statute Law it is a contempt finable, though the Plaintiff have the forfeiture, as upon the Statute of Huy and Cry, &c. and I take the Case *inter Lured and Owen. M. 4. Jac. C. B.* for the better Law, where it was held good.

More 911.

Hertley 121.

Upon an Action brought by two upon this Statute, who made their Title by a Lease from a Patentee of the King, and exception

Cro. El. 70.

exception was taken, because they did not shew the Patent, but disallowed. 1. Because the Letters Patents did not belong to the Plaintiffs. 2. Because the Plaintiffs did not demand the Tithes themselves, but damages for a tort; another Exception was taken to the Declaration, because the Plaintiff alledged the Defendant did not agree with them, and did not say, or either of them, but held good by Intendment.

2 Bulst. 65.

228. 183.

1 Brown 86.

Noy 3.

Yelv. 63. Cro.

Jac. 68. 361.

And it hath been adjudged, that in this Action, the Plaintiff needs not to shew his Title especially, but it is enough for him to alledge that he is Propriator, Farmer or Rector, generally without shewing how.

2 Brown. 70.

71.

And it hath been held good, though the Plaintiff in his Declaration do not express the quantities or loads of the Corn or Hay carried away.

2 Inst. 650.

And so it is, though you do not express in your Declaration, the kinds of the Grain carried away.

Coke versf.

Smith H. 7.

Car. 1. ro. 587.

B.R. per

Latch.

Where a Man alledged, that he was Farmer of all the Tithe-Corn arising, &c. upon sixty Acres of Land in D. and did not alledge which they were in certain, & yet allowed for good. 2. The Plaintiff alledged the Defendants Occupiers, but did not say, whether joyntly or in common, and yet held good. 3. The Plaintiff had alledged no time of the carrying away, but

but having alledged the time of the severance, and the carrying away, coming in with a Conjunction Copulative it was held well enough.

In an Action brought upon this Statute, the Plaintiff averred in his Declaration, that he was *subditus dicti Domini Regis*, having recited the Statute, and it was held naught, because it must necessarily be intended E. 6. and not of the present King. Cro. Jac. 324.
2 Bulst. 114.

In an Action upon this Stat. the Defendant pleaded a Recovery in the Ecclesiastical Court; but it was held no good Plea at Common Law, but I conceive it would be a good evidence upon *nil debet* pleaded, otherwise the Parishioner were in an ill Condition. Pleas in this
Action.
Porter vers.
Rochester.
Hill. 9. Jac. B.
R.

In this Action *non culpa.* and *nil debet* have been both held good Issues, but it is no good Plea to plead, that the Plaintiff sowed the Corn, and sold it to the Defendant, because this matter will not excuse the payment of Tithes. Wortley
vers. Em-
pringham. P.
42. El. B. R.
Hob. 218.
Cro. El. 766.
Cro. Jac. 361.

Now having brought the cause to issue upon *nil debet* or *non culpa.* we will shew in the next place what will be good and material evidence, as well for the Plaintiff as Defendant.

First, If the Plaintiff be a Parson, Vicar or other Ecclesiastick, and have not been some considerable time in possession of his Living; in which I have not observed What Evidence
is necessary
in this Action.
ex parte
quer.

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served any constant rule amongst the Judges in their practice, but ten years quiet possession for the most part is allowed by the Judges for an evidence of the Plaintiffs Title, unless some material objection be made against it to draw it into question, but if the Plaintiff have been but for some short time in possession, or the possession litigious, then the Judges usually put the Plaintiff to prove his institution and induction, and now he must prove that he was in Episcopal Orders at the time of his Institution, otherwise his institution is void by the late Act of Uniformity; he must produce a Certificate under the Hand and Seal of the Bishop, &c. that instituted him, that he subscribed the Declaration mentioned in the Act of Uniformity, and must prove he subscribed the same in the presence of the Bishop, or, &c. and he must prove that within two Months after he was inducted, upon some Sunday or Lords day during Divine Service, he read the thirty nine Articles of Religion in the Parish Church into which he was inducted, and that he did declare his unfeigned assent and consent to all things therein contained, and he must likewise prove that within two Months after actual possession of his Living he read Morning & Evening Prayer in his Church upon some Lords day, and openly and publickly before the Congregation

gation declared his assent and consent to the use of all things therein contained and prescribed in these words, *I, A. B. do here declare my unfeigned assent and consent, to all and every thing contained & prescribed in and by the Book Intituled the Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be sung or said in Churches, and the form or manner of making, or Ordaining, and Consecrating Bishops, Priests and Deacons.*

The Parson, Vicar, &c. having thus made himself a Title, must proceed to prove the taking and carrying away the Corn, Hay, &c. and the value; and if need be that the Land lies within the Parish, &c. but this the Judges put them to prove first of all commonly.

But if the Plaintiff be a Farmer or Patentee under the Crown he must prove his Title, but if he have been any considerable time in possession, and the Title not controverted, the Judges seldom put the Plaintiff to shew any more Title but his bare possession and enjoyment, and that others pay him Tithes.

And so having shewed what is necessary the Plaintiff should be prepared to prove, I will proceed to shew what defence the Defendant may make.

Dd

The

Ex Parte De-
fendentis.
Brown. 1.34.

2 Inst. 649.

The Defendant upon the general issue of not guilty, &c. may prove that he duly set forth his Tithes, but if he afterwards carried them away it will not serve his turn; so if he sell his Corn privately to another, and after he has sold it privately, cuts and carries it away; the Action lies against the first Owner; the same Law is, where the Owner of the Land privately sells his Corn to another who privately cuts and carries it away.

And the Defendant may prove that another has a better Title to whom he has paid his Tithes, or compounded with him for them.

Or he may prove that the Parson came in by Simony, or any other matter that makes his presentation, institution, or induction void, or any other defect in not reading the Articles, &c.

Or he may prove that he set forth his Tithes, and a Stranger carried them away, or may give in evidence, a Lease or Grant from the Plaintiff himself, or any other to whom he can make a good Title, but such Leases and Grants must be in writing unless for one year only, to the Owner of the Land, which hath been held good by way of retainer.

Verdict.

The Jury, if they find for the Plaintiff, are to find how much of the debt demanded by the declaration is due to the Plaintiff,

Plaintiff, which they are to do by trebling the value of the Tithe subtracted, wherein they are usually assisted by the Court.

The judgment is always given for the debt found by the Jury without costs, because this Action is grounded upon a penal Law, where no Action lay at Common Law, neither shall the Defendant have any costs, if the Verdict pass for him; but if judgment be given for the Plaintiff in an Action brought upon this Statute by *nihil dicit, non sum informatus*, or demurrer, the Plaintiff shall have judgment for the whole debt demanded by his declaration. And if an Action upon this Statute be brought against two or more, and Verdict only pass against one, or part of the Defendants, the Plaintiff shall have Judgment against those against whom the Verdict passes, though the others be acquitted, *quod nota*.

Judgment.

Cro. Jac. 361, 362.

Stiles 317, 318.

Note that this Statute, as to the treble value and double value, extends only to Predial Tithes, and not to Personal, mixt, or other Church duties.

Nota.

The Exchequer likewise by English bill holds plea for the single value, for subtraction of all manner of Tithes, Oblations, &c. of which great use hath been made since the late Wars; and there they decree the single value with costs, & the future payment, which is of great advantage

Jurisdiction of the Exchequer.

De s vantage

vantage to the Plaintiffs, and these Suits are not interrupted with prohibitions; but these Suits are often very costly too, for if a *modus decimandi*, or the bounds of the Parish come in question, and the proof not very clear, they are frequently sent to Trials at Law, which gives delay and increases the charges very much. This Jurisdiction I take it is much fortified since Tenths and Firstfruits were annexed to the Crown: but Suits of this nature were rarely brought in this Court before the War. however there are some antient Books prove that this Court on the Law side has assumed Jurisdiction of Tithes, but the reporter Reports it with a *quod mirum*.

38 Aff. p. 20.

44 E. 3. 43. 44.

50 E. 3. 20.

2 H. 4. 15.

20 H. 6. 17.

1 H. 6. 5.

2 E. 4. 5.

44 Aff. p. 25.

38 E. 3. 5.

25 H. 8. Br. Jurisdiction 95.

Lastly, it is evident in our Books of Law, that the rights of Tithes were frequently determined at Common Law in Actions of Trespass for taking away of Tithes, unless both parties were Clergymen; and sometimes Assizes have been brought at Common-Law for Tithes between lay Persons. And it is held in the 25 H. 8. that where the Lord of a Manor claimed Tithes in consideration of finding a Chaplain at such a Chappel, and the Parishioners claimed them likewise upon the same consideration, that the right of these Tithes being between Lay Persons was triable at Common Law only.

And at this day if Tithes be once set forth and divided from the Nine parts by the Owner of the Corn; and any person that has not right to them carries them away the Suit for this Trespass must be in the Temporal, and not in the Spiritual. 38 E. 3. 5.

And by the Statute of 32 H. 8. it is enacted, that in all cases where any Person, &c. which then had, or then after should have any Estate of Inheritance, Free-hold, &c. in or to any Parsonage, Vicarage, Portion, Pension, Tithes, Oblations, and which then were, or then after should be made Temporal, or admitted to be, abide, and go to, or in temporal hands, and Lay uses, and profits by the Law, &c. should then after fortune to be disseised, deforced, wronged, or otherwise kept or put out from their Lawful Inheritance, Estate, Seisine, Possession, Occupation, Term, Right or Interest, of, in, or to the same, or, &c. by any other Person, or, &c. claiming or pretending to have Interest or Title to the same, that then, and in every such case, &c. the Person, &c. so disseised, &c. the Heirs, Wives, &c. shall and may have their remedy in the Kings Temporal Courts, or other Temporal Courts as the Case shall require for the recovering, &c. such inheritance, &c. by Writs Original of *quod ei deforceat præcipe*

The Parsons Councelloz: Part II.

quod reddat, Assise, &c. as the Case shall require, &c. So that since this Statute the Case is put out of all doubt, that for such Tithes, &c. which are become Lay-fee, the right, Title and possession is become determinable at the Common Law, and all manner of real Actions, Ejectments and other personal Actions are brought there as the Case requires daily.

And now having shewed in how many Courts, and how many ways Tithes may be recovered, it calls to my mind the Fable of the Fox and the Cat who had but one way to shift for her self when the Hunts-men came, but that one proved better and more secure than all the shifts the Fox had boasted of; for upon the whole matter it were much better for the Reverend Clergy if they had one ready way to recover single damages with their costs of Suits at Common Law where they might not be interrupted by Prohibitions, and clashing of Jurisdctions, and tost from one Court to another, than all these ways I have mentioned. And it is a wonder to me that there being hardly a Lord in Parliament, nor many of the House of Commons that have not some part of their Estates in impropriations, though they had no kindness to the

Church,

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and in
the tin
Monat
for if
year of
decima

Church, yet for their own interest and concerns have not to that purpose preferred some Law in Parliament before this time; which might be done in a few lines by giving an Action of the Case at Common Law for the subtraction of Tithes with costs, or if the Parliament should think fit the smaller sort of Tithes might be determined in a Summary way by the Justices of Peace with an appeal to the Judges of Assise, but this I humbly submit as I do all the rest to better Judgments.

I have now finished this small Tract *The conclusion of the whole.* whereby I wish the Reverend Clergy may receive as much satisfaction as I desire, or they can expect. And I shall now conclude all with a List of those Monasteries, the Lands of which are only capable to be discharged of the payment of Tithes, by Order, Bull, Prescription, real composition or otherwise, that every Clergy man may satisfie himself without further enquiry whether such Monastery Lands as shall happen to be in his Parish, &c. may have the benefit of the Statute of 31 H.8. to be freed of the payment of Tithes: and in the List following I have set down the times of the foundations of the several Monasteries, that being material to know, for if they were founded since the first year of R.1. they cannot prescribe *in non decimando.* I have also for the most part

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set down what order the Houses were of, that the Reader may satisfie himself whether they were of any of those Orders that were priviledged from the payment of Tithes: for the valuations I have followed Mr. *Dugdale*, as being a sure Author, having observed many Errors in that of Mr. *Speed*.

In the perusal of this Catalogue you will find how many Foundations were made of Monasteries in the first Century after the Conquest; and till the Reign of King *John*, that if they had continued at that rate, the greatest part, if not all the Land in *England*, had by this day been Monastery Land, but in King *John's* time they began to slack, and in the ninth of *H. 3.* the Statute of Mortmain was made, after which you will find but few Religious Houses (as they were called) founded.

Magna Charta.

The *Cistercian* order came into *England* about the year of our Lord 1128. and in the ensuing Table, you may see how well they prospered, that in so short a time there should be so many of the greater Abbies of that order.

Stow's Survey of London.
1530.

The black Canons regular of *St. Augustine* first came into *England* as Mr. *Stow* says in the Year 1108. and were first placed in Trinity Church within *Algate London*, but I rather think he is mistaken in the time, for I find some Monasteries

nafteries of that order before that time:
However the enfuing Catalogue will inform you of their increafe.

And it is without difpute that the increafe of Monafteries, efpecially thofe of privileged Orders, tended very much to the prejudice of the Secular Clergy that had the Cure of Souls; for befide the orders that were privileged they appropriated all the Churches they could obtain, and how ill they were ferved a Man may in fome meafure obferve that perufes the Statute of 15 R. 2. and 4 H. 4. for it appears by them that they endowed no Vicarage at all upon the appropriating Churches, or fo meanly, that the Vicars *Endowment of Vicarages.* could not live upon them, and not at all Hofpitality praftifed. And therefore the Parliament of England which has always put a ftop to the ufurpations and exorbitances of Rome, and to prevent the Religious Houfes destroying the Church, in the 15th Year of the Reign of King Richard the fecond made a Law, *that the* 15 R. 2. cp. 6.
Diocesan of the place where any Church was to be appropriated, fhould take care the Vicarage fhould be well and fufficiently endowed befides a Portion to the poor. But this Act not having the effect was defired and expected, the Bifhops of thofe times being overawed by his Holineffes mandates, or participating too much of his qualities, a fecond good Act was made in the 14th Year

4 H. 4. cap. 12. *Tear of King H. 4. whereby it was enacted, that all those appropriations, that were made since the former Statute without such endowments, were declared to be void. And that no Religious Person (that is; Monks and Fryars) should be made Vicar in any Church appropriated, or to be appropriated by any means in time to come, and that no Vicarage should be appropriated by these Statutes, and divers other Statutes cited in this work upon several occasions. It is easie to guess what opinion they had, even in the times of Popery, of these People called Religious Men.*

I have now made too long a digression; and will therefore proceed to the Catalogue I promised the Reader,



Here

New
Elme
Ware



Here follows a Catalogue of the several

Monasteries, that upon the general Survey taken in the 26th year of H. 8. were returned to be of the annual value of 200 *l.* *per an.* and upwards within *England* and *Wales*, and by consequence dissolved by the Statute of 31 H. 8. *cap.* and by that means are capable of being discharged of the payment of Tithes; with the date of their Foundations, as near as I can compute, with what Orders they were of: In which observe, that *A.* stands for *Abbey*, *P.* for *Priory*, *Ben.* for *Benedictins*, *Cist.* for *Cisterians*, *Præm.* for *Præmonstratenses*, *Car.* for *Carthusians*, *C.S.A.* for *Canons of St. Austin*, *F.* for *Founded*, *T.* for *Tempore*, and in the valuations I have rejected all *ob.* and *q.*

	Berks.	<i>l.</i>	<i>s.</i>	<i>d.</i>
R Eading Ben. F. T. H. 1.		1938	14	3
Buslesham A. C. S. A. F. 13	E. 3.	0285	11	0
Abington A. Ben. F. 720.		1876	10	9
Bedford.				
Newnham P. C. S. A. T. H. 1.		0293	5	11
Elmestow A. Ben. F. T. W. Conquest.		0284	12	11
Wardon A. Cist. F. 4. Steph. 1138,		0389	16	6
				Chickland

The Catalogue of Monasteries.

<i>Chick sand P. White C. Gibertines F.T.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>W. Ruf.</i>	0212	3	5
<i>Dunstable A.C.S.A.F.T.H.1.</i>	0344	13	3
<i>Woburn A.Cist.F.T. Johannis Regis</i>	0391	18	2
<i>Bucks.</i>			
<i>Ashrugge Coll.C.S.A.F.T.E.1.</i>	0416	16	4
<i>Noteley A.C.S.A.F.T.H.1.1112.</i>	0437	6	8
<i>Missenden A. Ben. F. 1293.</i>	0261	14	6
<i>Cantabr.</i>			
<i>Tborney A. Ben. F. 972.</i>	0411	12	11
<i>Barrowel P.C.S.A.F.T.H.1. 1092.</i>	0256	11	10
<i>Cestr.</i>			
<i>S. Werburge A. Ben. F. 1095.</i>	1003	5	11
<i>Combermeve A. Cist. F. 1134.</i>	0225	9	7
<i>Cornub.</i>			
<i>Bodnim P. C. S. A. F. 936.</i>	0270	0	11
<i>Launceston A.C.S.A.T.W. Conquest.</i>	0354	0	11
<i>St. Germans A.C.S.A.F.T. Ethelstani</i>			
<i>Regis.</i>	0243	8	0
<i>Cumbr.</i>			
<i>Carlisle P.C.S.A.F.T.W. Ruf.</i>	0418	3	4
<i>Holmcoltrom A. Cist. F. 1135.</i>	0427	19	3
<i>Derb.</i>			
<i>Darley A.C.S.A.F.T.H.2.</i>	0258	14	5
<i>Devon.</i>			
<i>Ford A. Cist. F. 1133.</i>	0374	10	6
<i>Newham A. Cist. F. circa 1246.</i>	0227	7	8
<i>Dinkeswel A. Cist. F. 1201.</i>	0294	18	6
<i>Heriland A.C.S.A.F.T.H.2.</i>	0306	3	2
<i>Terre A. Prem. F.T.R. 1.</i>	0396	0	11
<i>Buckfast A. Cist. F.T.H.2.</i>	0466	11	2
<i>Plimpton A. Cist. F.T.E.1.</i>	0241	17	9
<i>Tavestock A. Ben. F. 961.</i>	0902	5	7
		<i>Exon.</i>	

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The Catalogue of Monasteries.

		l.	s.	d.
d.	ExonP. Cluna F.T.H.1.	0502	12	9
5	Dorset.			
3	Abbotsbury Ben.F.circa 1016.	0390	19	2
2	Middleton A.Ben.F.per R.Ethelstan	0578	13	11
	Tarrent A.Cist.F.per H.3.	0214	7	9
4	Shafton A.Ben.F.941.	1166	8	9
8	Cerne A.Ben.F.T.R.Edgari	0515	17	10
6	Sherborne A.Ben.F.circa 370.	0682	14	7
	Dunelm.			
11	St.Cuthbert A.Ben.F.circa 824.	1366	10	9
10	Tinmouth P.Ben.F.	0397	10	5
	Essex.			
11	Berking A.Ben.F.680.	0862	12	5
7	Stratford Langthorne A.Cist.F.1135.	0511	16	3
	Waltham A.C.S.A.F.circa 1060.	0900	4	3
11	Walden A.Ben.F.1136.	0372	18	1
11	St.Oswith A.C.S.A.F.1120.	0677	1	2
	Colchester A.C.S.A.T.H.1.	0523	17	0
0	Glouc.			
	Bristol A.C.S.A.F.circa T.H.1.	0670	13	11
4	Hayles A.Cist.F.1246.	0357	7	8
3	Winchcomb.A.Ben.F.787.	0759	11	9
	Temesbury A.Ben.F.715.	1598	1	3
5	Cirencester A.C.S.A.F.T.H.1.	1051	7	1
	Kingswood A.Cist.F.1139.	0244	11	2
6	Gloucester A.Ben.F.680.	1946	5	9
8	Lanthonby P.juxta Glouc.C.S.A.F.1136.	0648	19	11
6	Hants.			
2	St.Swithins Winton A.Ben.F.634.	1507	17	2
11	Hyde Abb. Ben.F.per Regem Elfred.	0865	18	0
2	Wherwel A.Ben.F.T.Edgari Reg.	0339	8	7
9	Romsey moniales Ben.F.907.	0393	10	10
7	Twinham			
Exon.				

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	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Twinbam P.C.S.A.F. ante 1042.</i>	0312	7	0
<i>Bello loco. A.Cist.F.1204.</i>	0326	13	2
<i>Southwick P.C.S.A.F.T.H.1.</i>	0257	4	4
<i>Titchfield A.Prem.F.T.H.3.</i>	0249	16	1
Hertford.			
<i>St. Albans A Ben. F.755.</i>	2102	7	1
Hunts.			
<i>St. Neots A. Ben. F.circa T.H.1.</i>	0241	11	4
<i>Ramsay A.Ben.F.969.</i>	1716	12	4
Kanc.			
<i>St. Austins prope Cant. A.Ben.F.605.</i>	1413	4	11
<i>Ledis P.C.S.A.F.1119.</i>	0362	7	7
<i>Feversham A.Clun.F.1147.per R.Steph.</i>	0286	12	6
<i>Boxley A.Cist.F.1144.</i>	0204	4	11
<i>Roffen A.Ben.F.600.</i>	0486	11	5
<i>Malling A. Ben. per Regem Edm.</i>	0218	4	2
<i>Dertford A.C.S.A.F.46 E.3.per ipf. R.</i>	0380	0	0
Lanc.			
<i>Whalley A.Cist.F.1172.</i>	0321	9	1
Leic.			
<i>Leicestr. Ab.C.S.A.F.1143.</i>	0951	14	5
<i>Croxden A. Prem.F.circa T.R.1.Reg.</i>	0385	0	10
<i>Launda A.C.S.A.F.T.W.Ruf.</i>	0399	3	3
Lincoln.			
<i>Lincolne St.Cath.P.Gilbert.F.T.H.2.</i>	0202	5	0
<i>Kirkstead A.Cist.F.1139.</i>	0286	2	7
<i>Revesly A.Cist.F.1142.</i>	0287	2	4
<i>Thornton A.C.S.A.F.1139.</i>	0594	17	10
<i>Bardney A.Ben.F.712.</i>	0366	6	1
<i>Croyland A.Ben.T.Reg.Ethelred.716.</i>	1803	15	10
<i>Spalding A.Ben.F.1052.</i>	0761	8	11
<i>Sempringham A.Gilbert f.1148.14.Steph.</i>	0317	4	1
Epworth			

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	l.	s.	d.
<i>Epworth moniales Carthus. 10. R. 2. fundat.</i>	0237	15	2
Lond. and Midd.			
<i>St. John Jerus. P. F. T. H. 1. 1100.</i>	2385	12	8
<i>St. Barthol. Smithfield C. S. A. f. 1102.</i>	0653	15	0
<i>St. Mary Bishopsgate Pr. f. 1187. 9 R. 1.</i>	0478	6	6
<i>Clerkenwel P. Ben. F. T. Reg. Steph.</i>	0262	19	0
<i>London Minors Ben. T. F. E. 1.</i>	0318	8	5
<i>Westminster A. Ben. F. T. Reg. Edgari</i>	3471	0	2
<i>Sion A. C. S. A. F. per Reg. H. 5.</i>	1731	8	4
<i>London domus Cart. fundat. T. E. 3. Reg.</i>	0642	0	4
<i>S. Clare extra Algate monial. F. 1292.</i>	0418	8	5
<i>S. Mary Charter-house Carth. f. 1371.</i>	0736	2	7
<i>S. Johns Holywell monial. nigr. f. 1318.</i>	0347	1	3
<i>S. Mary East-Smithfield. A. Cist. F. 34. E. 3.</i>	0602	11	10
Northfol.			
<i>Thetford Ab. Clun. F. 1103.</i>	0312	14	4
<i>Wymundham A. Ben. f. 1139.</i>	0211	16	6
<i>Hulmo A. Ben. F. per Canutum Reg.</i>	0583	17	0
<i>Westdreham A. Prem. F. T. H. 2.</i>	0228	0	0
<i>Walsingham A. C. S. A. F. circa T. Steph. R.</i>	0391	11	7
<i>Castle Acre A. Clun. F. 1090.</i>	0306	11	4
<i>Westacre A. Clun. F. T. W. Ruf.</i>	0260	13	7
Northon.			
<i>Burgi S. Petri A. Ben. F. per ro. fere R. Mer.</i>	1721	14	0
<i>Pipewell A. Cist. F. 1143.</i>	0286	11	8
<i>S. Andreas P. Clun. F. 1067.</i>	0263	7	1
<i>Sulby A. Prem. F. T. Steph. Reg.</i>	0258	8	5
Notts.			
<i>Lenton P. Clun. fund. T. H. 1.</i>	0329	5	10
<i>Iburgarton P. C. S. A. F. T. H. 1.</i>	0259	9	4
		Welbeck	

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	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Welbeck A.C.S.A.F.T.Reg.Steph.</i>	0249	6	3
<i>Warsop P.C.S.A.fundat.</i>	0239	10	5
<i>Bella Valla Pri.Carth.F.circa.16 E.3.</i>	0227	8	0
<i>Newstead P.C.S.A.F.T.E.3.</i>	0219	18	8

These two last are under value in Mr. Dugdale,
but thus per Speed.

Northumbr.

<i>Tinmouth a Cell to St. Albans a Nunnery.</i>	0511	4	1
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Oxon.

<i>Godstow A.Ben.F.T.Step.Reg.</i>	0274	5	10
<i>Eynesham A.Ben.F.T.Ethelred Reg.</i>	0441	12	2
<i>Osney A.C.S.A.F.T.H.1.</i>	0654	10	2
<i>Thama A.Cist.F.T.H.1.per Speed</i>	0256	13	7
<i>Oxford P.per Speed fund. ante Conq.</i>	0224	4	8
<i>Dorchester per eundem A.C.S.A.F.635.</i>	0219	12	0

Salop.

<i>Hagbmond A.C.S.A.F.1100.</i>	0259	13	7
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Lillestul A.C.S.A.F. per Adelfleda

R. mercia.

<i>Wigmore A.C.S.A.F.1172.per Speed.</i>	0267	2	10
<i>Wenlock P.clun.F.1181.vel antea.</i>	0401	0	7
<i>Salop A.C.S.A.F.1081.per Speed.</i>	0615	4	3
<i>Hales Owen A.Pr.em.fund.T.R.Joh.</i>	0337	15	6

Somerset.

<i>Glassenbury A.Ben.circa 300 F.</i>	3311	7	4
<i>Bremton A.C.S.A.F.T.Conquest.</i>	0439	6	8
<i>Henton P.Carth.F.T.H.3.</i>	0248	19	2
<i>Witham P.Cart.F.per H.2.</i>	0215	15	0
<i>Taunton P.C.S.A.T.H.1.</i>	0286	8	10
<i>Bathon A.Ben.fund.T.H.3.</i>	0617	2	3
<i>Keynesham A.C.S.A.F.T.H.1.</i>	0419	14	3
<i>Michelney A.Ben.F.740.</i>	0447	4	11

Buckland

The Catalogue of Monasteries.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
3	Buckland P.Cist. F.T.E.I.	0223	7	4
5	Staff.			
0	De la cres A.Cister.F. 1153.	0227	5	0
8	Burton sup. Trent. A.Ben.F.T.Eadredi R.	0267	14	3
le,	Croxden A.Cist.cont.Fundat.			
	Suffolk.			
1	S.Edmundi Bury.A.Ben.F.1020.	1659	13	11
	Butley A.C.S.A.F. 1171.	0318	17	2
10	Sibeton A.Cist.F. 1150.	0250	15	7
2	Ixworth P.C.S.A.F.T.Conq.	0280	9	5
2	Surry.			
7	Merton P.C.S.A.F. 1121.T.H.I.	0957	19	5
8	Shene P.Carth.F. 1414.	0777	12	0
0	Chertsey A.Ben.F. 666.	0659	15	8
	Newark P.	0258	11	11
7	S.Maries Overf.A.C.S.A.F. 7 H.1.	0624	6	6
	Bermundsey A.C.S.A.F. 7.H.1.	0474	14	4
	Warw.			
1	Combe A.Cist.F.T.Steph.R.	0311	15	1
10	Kenelworth A.C.S.A.F.T.H.1.	0538	19	0
7	Meryval. A.Cist.F. 1148.	0254	1	8
3	Nuneaton monial.Ben.F.T.H.2.	0253	14	5
6	Wilts.			
7	Malmesbury A.Ben.F. circa 670.	0803	17	7
4	Bradenstock P.C.S.A.F.T.Conq.	0212	19	3
8	Edington P.C.S.A.F. 1352.	0442	9	7
2	Ambresbury A.Ben.F. 1177.	0495	15	2
6	Wilton A.Ben.F.T.Ethelwolph. R.	0601	1	1
3	Fareley A Cell to Lewes per Speedf.			
10	1125. clun.	0217	0	4
2	Lacok A.C.S.A.F. 1232. per Speed.	0203	12	3
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Wigorn.

The Catalogue of Monasteries.

	l.	s.	d.
Wigorn.			
Malverne A. Ben. F. 1083.	0308	1	5
Evesham A. Ben. T. Offe.	1183	12	9
Pershore A. Cist. F. 1138.	0643	4	5
Halesowen A. Prem. F. T. Jab. Reg.	0282	13	4
Bordesly A. Cist. F. 1138.	0388	9	10
Eborum.			
St. Mary Eborum A. Ben. F. 2. W. Ruf.	1550	7	0
Selby A. Ben. F. T. Conq.	0729	12	10
Kirkstall A. Cist. F. 1147.	0329	2	11
De Rupe A. Cist. F. 1147.	0224	2	5
Monks Burton A. Clun. F. circa 1186.	0239	3	6
Nostell A. C. S. A. F. T. H. 1.	0492	18	2
Pomfrait A. Clun. F. T. Conq.	0337	14	8
Gisborne A. C. S. A. F. T. Steph. R.	0628	3	4
Whitby A. Ben. F. T. Conq.	0437	2	9
Montegratia A. Carth. F. circa 1396.	0323	2	10
Newburge P. C. S. A. F. 1145.	0367	8	3
Belland A. Cist. F. 1134.	0238	9	4
Kirkham A. C. S. A. F. T. H. 1.	0269	5	9
Melsa A. Cist. F. 1136.	0299	6	4
Brilington C. S. A. F. T. H. 1.	0547	6	11
Walton A. Gilbertines F. T. Steph. Reg.	0360	16	10
Bolton in Craven P. C. S. A. F. T. H. 1.	0212	3	4
Rival A. Cist. F. 1132.	0278	10	2
Jervall A. Cist. F. T. Steph. Reg.	0234	18	5
Furnes A. Cist. F. 1127.	0805	16	5
De Fontibus Cist. F. 1132.	0998	6	8
Warter P. C. S. A. F. T. H. 1.	0221	3	10
Rithal per Speed.	0351	14	6
Old Maulton. A. F. T. Steph. R. per Speed.	0257	7	0
St. Michael juxta Hull Carth. F. 1377.	0231	17	3
Wallia.			

The Catalogue of Monasteries.

Wallia.

<i>Valle de Sancta Cruce Com. Denbigh.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Cist. F.T.E.I.</i>	0214	3	5
<i>Strata Florida Cardigansh. Cist. or Clun.</i>			
<i>F.T. Cong.</i>	1226	6	0

Gloria Deo Patri, Deo Filio
& Deo Spiritui Sancto.

Amen.

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Youngs Vade Mecum of Justice.
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Herns Law of Conveyances.
Herns Modern Assurancer.
 Gentlemans Jockey, and *Cow Leech*.
 History of *Italy*.
Buxtons Antiquities of *England*.
 Minister of State first and second part.
Howels Londinopolis.
 History of *Swedeland* and *Poland*.
Grotius Annals.
Wingates Clerks Tutor to Arithmatick.
 Chymical Galenist.
 Countess of *Arundels* Secrets.
 Sir *John Finnets* Observations on Forraign Ambassadors.
 Life of *St. Paul*.
 Private Devotion.
 Discontented Colonel. } *Playes*.
 the Step-Mother. }
 The Country Mans Treasure, or *Lambert* of Catel.



ERRATA:

Delenda.

Page 66. line 10. (shall) p. 92. l. 12. (in) 124. l. 17. (which) 148. l. 8. (cheat) 178. l. 17. (the Parson himself and) 261. l. 6. (for) 280. l. 29. (both) 282. l. 7. (the) 296. l. 1. (it) 332. l. 32. after 1 H. 8. (and) 394. l. 26. (then)
In Margine. p. 228. (Leafe) 390. *post* 12 E. 4. 13. (7) 395. l. 1. (& 3) p. 68. l. 10. (shall.)

Addenda.

Page 66. line 21. *post* But add (this) p. 90. l. 14. *post* good (But) l. 29. *post* in form (him) 134. l. 27. *post* Markets (that) 13 S. *post* F. N. B. (50. c.) 203. l. *penult post* they (have) 112. l. *penult post* been (held) 139. l. 30. *post* subject (I.)
In Margine. p. 154. *post* Stat. 13 E. (I.)

Corrigenda.

Page 81. line 1. read Commons. p. 178. l. 10. r. Seat. p. 4. l. 24. r. Haunter. 370. l. 5. and 379. l. 17. r. Indicavit, p. 379. l. 15. r. or, 240. l. 1. for 18. E. 1. r. 17. E. 3. 273. l. 13. r. Pope. *ibid.* l. 14. r. he. 335. l. 28. r. these. 383. l. 10. r. not. 390. l. 6. r. explees. 246. l. 2. r. nutriantur. 248. l. 2. r. tonsionis. 288. l. 1. r. persona-liter. 294. l. 14. r. omnes. 297. l. 26. r. inhiare. 349. l. 27. r. aliquo.

Corrigenda in Margine.

Page 77 for cap. 14. read cap. 4. p. 95. for 2. r. (a) p. 129. for p. 2. r. p. 11. p. 208. for 10. r. ro. 255. for. c. c. r. c. 3. p. 333. for 953. r. 653. p. 336. for 608. r. 306. p. 281. for *Evagius* r. *Evagrius*. p. 313. ford. 3. r. d. 13. p. 381 for 41. r. 4. p. 385. for 9. 11. r. 911. p. 389. for 3. 64. r. 364. p. 395. for Cro. Eli. 70. r. Cro. Eliz. 170. p. 143. for Ancqran. r. Ancyran.



